CIVIL RULES GOVERNING THE COURT OF COMMON PLEAS

I. SCOPE OF RULES -- ONE FORM OF ACTION.

Rule 1. Scope of Rules.

These Rules shall govern the procedure in the Court of Common Pleas of the State of Delaware. They shall be construed and administered to secure the just, speedy and inexpensive determination of every proceeding.

Rule 2. One form of action.

There shall be one form of action to be known as "civil action."

II. COMMENCEMENT OF ACTION: SERVICE OF PROCESS, PLEADINGS, MOTIONS AND ORDERS: DEPOSIT AND SECURITY FOR COSTS.

Rule 3. Commencement of action.

(a) Complaint and praecipe. -- Except amicable actions, an action is commenced by filing with the Clerk of the Court a complaint or, if required by statute, a petition or statement of claim, all hereafter to be referred to as a "complaint" and a praecipe directing the Clerk of the Court to issue the writ specified therein. Sufficient copies of the complaint shall be filed so that 1 copy can be served on each defendant as hereafter provided. An amicable action is commenced by filing an agreement specifying the matters agreed upon.

(b) Omitted.

(c) Omitted. [See Rule 72.3]

(d) Omitted. [See Rule 72.3]

(e) Deposit for costs. -- The Clerk of the Court shall not file any paper or record or docket any proceeding until the required deposit for costs and fees has been made. Concurrently with the commencement of any civil action, the plaintiff shall pay to the Clerk the filing fee required by Rule 109 together with such additional sum as shall be required by the Sheriff of the county to which service of process is directed. Concurrently with any request for jury trial, the party making such request shall deposit with the Clerk of the Court the amount necessary for the commencement of the action in Superior Court.

(f) Security for costs. -- In every case in which the plaintiff is not at the time of filing his complaint a resident of the State, or being so, afterwards moves from the State, an order for security for costs may be entered upon motion after 5 days notice to the plaintiff; in default of such security as provided in the order, the Court, on motion may dismiss the complaint.

(g) Omitted.

(h) Required expedited discovery in personal injury litigation. --

(1) In any action involving a claim for personal injuries, the plaintiff shall attach and file with the complaint the following:

(I) Answers to interrogatories appearing in Superior Court Civil Rule Form 30;

(II) Photocopies of existing documentary evidence relating to special damages (or, in lieu thereof, a brief sworn statement as to any item not included as to the reason of its nonavailability and a specific undertaking as to when it will be made available);

(III) In any case in which lost wages or salary is claimed, photocopies of pertinent portions of the income tax returns of the plaintiff or plaintiffs for the past 3 years either (a) as an exhibit to the complaint, or (b) contained in a sealed envelope, or (c) a sworn statement that the copies of the returns are in the plaintiff's possession or have been applied for and a specific undertaking to supply them forthwith and without further request when an appearance is made on behalf of the defendant.

(2) If a counterclaim, cross-claim, or third-party complaint for personal injuries is filed, the claimant shall be required to file with the

claim that discovery which is required of a plaintiff in a claim for personal injuries.

(3) The prerequisites of Rule 3(h)(1) and (2) may for good cause shown be waived by an order of the Court.

Rule 4. Process.

(a) Issuance of writs. -- Upon the commencement of an action, the Clerk of the Court shall forthwith issue the process specified in the praecipe and shall deliver it for service to the sheriff of the county or counties specified in the praecipe or to a person especially appointed by the Court to serve it. The party requesting the issuance of process shall prepare a form thereof for signature by the Clerk of the Court under the seal of the Court. Upon direction of the plaintiff in the praecipe, separate or additional process shall issue against any defendants.

(b) Attachment under Chapter 35, Title 10, Delaware Code. --

(1) The proof required for the issuance of a mesne writ of attachment under Chapter 35, Title 10, Delaware Code, will be satisfied by filing with the complaint an affidavit of plaintiff or some credible person setting forth the facts required by the applicable statute. In addition to the facts required by the applicable statute, such affidavit shall also state:

(A) As to each nonresident defendant whose appearance is sought to be compelled, the defendant's last known address or a statement that such address is unknown and cannot with due diligence be ascertained.

(B) The following information as to the property of each defendant sought to be seized:

(I) A reasonable description thereof.

(II) The estimated amount and value thereof.

(III) The nature of the defendant's title or interest therein, and if such title or interest be equitable in nature, the name of the holder of the legal title.

(IV) The source of affiant's information as to any of the items as to which the affidavit is made on information and belief.

(V) The reason for the omission of any of the required statements.

(2) Bond required of plaintiff. -- No mesne writ of attachment shall be issued until plaintiff, in such proceedings, shall give bond, in an amount and with surety to be approved by the Court out of which the writ is to be issued, conditioned that if the suit shall not be prosecuted with effect, or if the judgment rendered therein shall be in favor of a defendant, the plaintiff will pay any and all costs which may be awarded to a defendant, together with any and all damages, not exceeding the amount of the bond, which a defendant in the suit may have sustained by reason of such attachment; for this purpose, a bond executed by an approved surety company alone, without joinder of plaintiff shall be deemed a compliance with the provisions of this Rule. In fixing the amount of such bond, the Court may consider the kind of property to be seized, the estimated value thereof, the possibility of a loss to a defendant as the result of the seizure, and other relevant matters.

(3) Release of attached property. --

(A) Any nonresident defendant whose property shall have been seized upon a writ of foreign attachment and who shall have entered a general appearance in the cause may move for an order releasing such property or any part thereof from seizure. The Court shall then release such property forthwith unless the plaintiff shall satisfy the Court that because of other circumstances there is a reasonable possibility that such release may render it substantially less likely that plaintiff will obtain satisfaction of any judgment thereafter secured and in that event plaintiff shall also give bond with approved surety, in an amount at least equal to the current value of the property seized, conditioned that if the cause shall not be prosecuted with

effect, or if judgment rendered therein shall be in favor of a defendant, the plaintiff will pay all damages, including costs, which such defendant may have sustained by reason of such seizure, not exceeding the amount of such bond.

(B) Any property seized under a mesne writ of attachment will be released from seizure, in whole or in part, upon defendant's furnishing such security for its release as is approved by the Court, conditioned for the payment of any judgment that may be recovered in the proceedings with costs, in an amount at least equal to the current value of the property to be released or the amount claimed in the suit, whichever is the lesser; provided, however, that the furnishing of such security shall not of itself constitute a general appearance.

(4) A writ of foreign attachment may issue against any individual or incorporated association not an inhabitant of this State or against a foreign corporation, although joined as parties defendant with other nonresident or resident parties, with the same effect as if such nonresident defendant were the only defendant.

(5) Every mesne writ of attachment issued shall specify therein a reasonable description of the property to be seized, and the amount claimed by the plaintiff. The Clerk of the Court shall cause to be published a copy of such writ in a newspaper of general circulation in the county in which the writ is issued at least once within 20 days after the issuance of such writ. Within 7 days after the filing of the sheriff's return of a writ of mesne attachment, the Clerk of the Court shall, in addition to making the required publication, send by registered mail to every nonresident defendant whose appearance is sought to be compelled, at the address furnished by plaintiff, if such address is known, certified copies of the complaint, affidavit, writ and return, filed in the cause. No publication will be required if all defendants shall have been personally served prior to the time publication would otherwise take place, and no mailing will be required to any defendant who has been personally served.

(6) Except in cases of garnishment, if it appears from the description of the property to be seized that it is not susceptible of physical seizure within the State, the plaintiff shall upon institution of suit obtain from the Court an order, a certified copy of which shall be served with the writ, upon the person, persons or corporation having possession or custody of the property or control of its transfer, directing such person, persons or corporation to:

(A) Retain the property and recognize no transfer thereof until further order of the Court;

(B) Forthwith make a notation upon any records pertaining to the property that such property is held pursuant to the order of the Court; and

(C) Within 10 days after the date of such service, file a certificate under oath with the Clerk of the Court, specifying:

(I) Such defendant's property, if any, of which it has possession, custody or control, or control of its transfer;

(II) Whether the title or interest of each such defendant is legal or beneficial; and

(III) If legal, the name and address of the holder of any equitable or beneficial title or interest therein, if known, and if beneficial, the name and address of the holder of the legal title thereto, if known.

(7) Costs. -- The plaintiff shall deposit with the Clerk of the Court an amount sufficient to defray the cost of publication in any case where such publication is required in addition to the usual deposit for costs, before a writ of foreign attachment will be issued.

(8) In any action commenced by mesne writ of attachment, the defendant shall serve the answer (and if required, an affidavit of defense) within 40

days after the date of the attachment of the property or the service of the writ upon a garnishee, as the case may be. After the expiration of such 40-day period, or after the defendant's appearance, whichever first occurs, the action shall proceed as in suits commenced by summons.

(9) If any attached property is of a perishable nature, or will cause undue expense in its keeping, the Court may order the attaching officer, on due notice, to sell the same, and retain the proceeds of sale, subject to the order of the Court. No property attached under a mesne writ of attachment or garnishment shall be sold except upon order of the Court, which order shall specify the notice required and all other pertinent matters relating to such sale.

(c) Contents of writ: Generally. -- The process shall bear the date of its issuance, be signed by the Clerk of the Court or 1 of the Clerk's Deputies, be under the seal of the Court, contain the name of the Court and the names of the parties, state the name of the official or other person to whom it is directed, the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which these Rules require the defendant to appear and defend, and shall notify the defendant that in case of the failure to do so, judgment by default will be rendered against the defendant for the relief demanded in the complaint.

(d) By whom served. -- Service of process shall be made by the sheriff to whom the writ is directed, by a deputy sheriff, or by some person specially appointed by the Court for that purpose, except that a subpoena may be served as provided in Rule 45.

(e) Process and complaint to be served together. -- The process, complaint and affidavits, if any, shall be served together. The Clerk of the Court shall furnish the person making service with such copies as are necessary. Service shall be made as follows:

(f) Service of process; how made. --

(1) Summons. -- Service of summons shall be made as follows:

(I) Upon an individual other than an infant or an incompetent person by delivering a copy of the summons, complaint and affidavit, if any, to that individual personally or by leaving copies thereof at that individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or, by delivering copies thereof to an agent authorized by appointment or by law to receive service of process.

(II)(a) Omitted.

(b) Upon an infant under the age of 18 years, if such infant has a guardian in this State, by service upon such guardian in the same manner as upon an individual, if the guardian is an individual, or in the same manner as upon a corporation, if the guardian is a corporation; and if there is no such guardian, by service in the same manner as upon an individual upon an adult person with whom such infant resides or has his or her place of abode.

(c) Upon an incompetent person, if such person has a trustee or guardian in this State, by service upon such trustee or guardian, in the same manner as upon an individual, if the trustee or guardian is an individual; or in the same manner as upon a corporation, if such trustee or guardian is a corporation; and if there is no such trustee or guardian, by service in the same manner as upon an individual, upon an adult person with whom such incompetent person resides or has his or her place of abode.

(d) As used herein, trustee or guardian refers to one appointed by the court of competent jurisdiction in this State; provided, however, that a trustee or guardian duly appointed by a court of competent jurisdiction of another state may accept service and/or appear, upon filing proof of state appointment in the cause here pending.

(e) Upon an infant or incompetent person, not a resident of the State, in the same manner as upon a competent adult person who is not an inhabitant of or found within the State.

(III) Upon a domestic or foreign corporation or upon a partnership or unincorporated association which is subject to suit under common name by delivering copies of the summons, complaint and affidavit, if any, to an officer, a managing or general agent or, to any other agent authorized by law to receive service of process and if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

(IV) Upon a municipal corporation or other governmental organization subject to suit by delivering a copy of the summons, complaint and affidavit, if any, to the chief executive officer thereof or by serving copies thereof in the manner prescribed by law for the service of summons upon such defendant.

(V) Upon a defendant of any class referred to in subsection (I) and (III) of this rule, it is also sufficient if the summons, complaint and affidavit, if any, are served in the manner prescribed by any statute.

(VI) Whenever a statute, rule of Court or an order of Court provides for service of summons or of a notice or of an order in lieu of summons upon a party not an inhabitant of or found within the State, service shall be made under the circumstances and in the manner prescribed by the statute, rule or order.

(2) Attachment. -- Service of attachment or garnishee process shall be made in the same manner, as provided in Rule 4(f), on those persons, firms or corporations subject to such service in this State. If garnishees are summoned upon a writ of mesne attachment, the person serving the writ shall leave with them a copy of the writ, the complaint and affidavit. If execution of the writ requires seizure of personal property, the sheriff shall levy thereon and make the return in the same manner as heretofore.

(3) Capias. -- The writ of capias shall be served as provided by statute. The person serving the writ shall deliver to the defendant a copy of the writ, complaint and affidavit.

(4) Omitted.

(5) Service of original process other than summons, attachment or capias. -- Service of original process other than summons, attachment, or capias shall be made as provided by statute or order of court.

(g) Return of process. -- Original process, whether an original, alias or pluries writ, shall be returnable 20 days after the issuance of the writ. The person serving the process shall make return thereof to the Court promptly after service and in any event, on the return day thereof. Process which cannot be served before the return day thereof shall be returned on the return day and such return shall set forth the reasons why service could not be had. If service is made by a person other than by an officer or his deputy, his return shall be verified. Failure to make a return or proof of service shall not affect the validity of service.

(h) Actions in which service of process is secured pursuant to 10 Del.C. { 3104, { 3112 or { 3113. -- In an action in which the plaintiff serves process pursuant to 10 Del.C. { 3104, { 3112 or { 3113, the defendant's return receipt and the affidavit of the plaintiff or the plaintiff's attorney of the defendant's nonresidence and the sending of a copy of the complaint with the notice required by the statute shall be filed as an amendment to the complaint within 10 days of the receiving by the plaintiff or the plaintiff's attorney of the defendant's return receipt; provided, however, that the amendment shall not be served upon the parties in accordance with the provisions of Rule 5(a).

(i) Amendment of process. -- At any time in its discretion and upon such terms as it deems just, the Court may allow any process or return of proof of service to be amended unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

(j) Summons: Time limit for service. -- If a service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint and the party on whose behalf such service was required cannot show good cause why such service was not made within that period, the action shall be dismissed as to that defendant without prejudice upon the court's own initiative with notice to such party or upon motion.

Rule 5. Service and filing of pleadings and other papers.

(a) Service: When required. -- Except as otherwise provided in these Rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the Court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the Court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

(aa)(1) Appearance: When; how made; withdrawal. -- Except as otherwise provided by statute, a defendant may appear though a summons has not been served upon the defendant. Appearance may be made by the service and filing of notice thereof, or by the service or filing of any motion or pleading purporting to be responsive to, or affecting the complaint, except that appearance for purpose of satisfying a judgment, when appearance may be made by notation thereof on the judgment docket. An attorney may withdraw the attorney's appearance without obtaining the Court's permission where such withdrawal will leave a member of the Delaware Bar appearing as attorney of record for the party. Otherwise, no appearance shall be withdrawn except on order of the Court. Except in the case of a party appearing pro se, or in the case of representation of a party by an attorney admitted pro hoc vice, all papers filed with this Court shall be signed by an attorney who is an active member of the Bar of the Delaware Supreme Court, and who maintains an office in Delaware for the practice of law as defined by Delaware Supreme Court Rule 12(d).

(2) Appearance of garnishee: When; how made. -- Any garnishee duly summoned (either on mesne writ of attachment or execution process) shall serve upon plaintiff a verified answer within 20 days after service of process, which shall specify what goods, chattels, rights, credits, money or effects of a defendant, if any, the garnishee has in the garnishee's possession or custody. Within 10 days after service of such answer, plaintiff may serve exceptions thereto, and the proceedings on the issues thus raised shall be had as in actions commenced by summons. If no exceptions are filed by plaintiff to garnishee's answer within the 10-day period as aforesaid, a delivery to the sheriff of the property set forth in the answer by the garnishee, or so much of it as shall satisfy plaintiff's demand, shall be a discharge of the garnishee in the proceedings, and the sheriff shall make a suitable supplemental return on the writ showing the property which has been delivered to the sheriff by the garnishee, and shall dispose of such property as directed by the writ. Unless the garnishee delivers such property to the sheriff within 5 days after the expiration of the 10-day period for plaintiff's exceptions, if any, the sheriff shall on written direction of the plaintiff physically seize any property subject to seizure, and with respect

to any property set forth in the answer, which is not seized or delivered to the sheriff, the plaintiff on motion may have personal judgment entered against the garnishee in favor of plaintiff in an amount equal to the value of the property of defendant in garnishee's custody or possession, or the amount of the plaintiff's judgment, whichever is less, with interest and costs. Before the sheriff shall serve any writ of attachment, the sheriff shall receive from the plaintiff the sum of $20 for each party to be summoned as garnishee (except as to garnishment governed by the terms of 10 Del.C. { 4913) and said sum shall be delivered to each garnishee when the summons is served; the return on the writ of garnishment will show the garnishee fee paid, which will be taxed as costs in the case; no garnishee will be required to answer without first having received the garnishee fee as aforesaid.

(b) Service of pleadings and papers: How made. -- Whenever under these Rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party personally is ordered by the Court. Service upon the attorney or upon a party shall be made by delivering a copy or by mailing it to the attorney or the party at the attorney's or party's last known address or, if no address is known, by leaving it with the Clerk of the Court. Delivery of a copy within this Rule means: handing it to the attorney or to the party; or leaving it at the attorney's or the party's office with a clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.

(1) In any action involving a claim for personal injuries, the defendant shall file and serve with his answer, answers to the interrogatories appearing in Superior Court Rules Form 30.

(2) If a counterclaim, cross-claim or third-party complaint for personal injuries is filed, the defendant in such claim shall file with the answer that discovery which is required of a defendant in a complaint for personal injuries.

(3) The prerequisites of Rule 5(b)(1) may for good cause shown be waived by order of the Court.

(c) Same: Numerous defendants. -- In any action in which there are unusually large numbers of defendants, the Court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the Court directs.

(d) Filing. -- All papers after the complaint required to be served upon a party shall be filed with the Court within a reasonable time after service thereof subject to the following provisions.

(1) All requests for discovery under Court of Common Pleas Civil Rules 31, 33, 34, 35 and 36 and answers and responses shall be served upon all appearing counsel or parties appearing pro se but shall not be filed with the Court. In lieu thereof, the party requesting discovery and the party serving responses thereto shall file with the Court a "Notice of Service" containing the following information:

(a) a certification that a particular form of discovery or response was served on other counsel or opposing parties, and

(b) the date and manner of service.

(2) The party responsible for service of the request for discovery and the party responsible for the response shall retain the originals and become the custodian of them. The party taking an oral deposition shall be custodian of the original; no copy shall be filed except pursuant to subparagraph (3). In cases involving out-of-state counsel, local counsel shall be the custodian.

(3) If depositions, interrogatories, requests for documents, requests for admission, answers or responses are to be used at trial or are necessary to a pretrial or post-trial motion, the verbatim portions thereof considered pertinent by the parties shall be filed with the Court when relied upon.

(4) When discovery not previously filed with the Court is needed for appeal purposes, the Court, on its own motion, on motion by any party or by stipulation of counsel, shall order the necessary material delivered by the custodian to the Court.

(5) The Court, on its own motion, on motion by any party or an application by a non-party, may order the custodian to file the original of any discovery document.

(6) When discovery materials are to be filed with the Court other than during trial, the filing party shall file the material together with a notice setting forth an itemized list of the material.

(7) It shall be the duty of the party on whose behalf a deposition was taken to make certain that the officer before whom it was taken has delivered the original transcript to such party. Unless otherwise ordered by the Court, any deposition which has been filed pursuant to this Rule may be unsealed by the Clerk of the Court.

(e) Filing with the court defined. -- The filing of pleadings and other papers with the Court as required by these Rules shall be made by filing them with the Clerk of the Court, except that the judge may permit the papers to be filed with the judge, in which event the judge shall note thereon the filing date and transmit them to the office of the Clerk of the Court. Papers may be filed by facsimile transmission or electronically if permitted by these Rules, by administrative order, or by a judge.

(f) Proof of service of papers. -- Unless otherwise ordered, no pleading or other paper, required by these Rules to be served by the party filing the paper, shall be filed unless the original thereof shall have endorsed thereon a receipt of service of a copy thereof by all parties required to be served or it shall be accompanied by affidavit showing that service has been made and how made or it shall be accompanied by a certificate of an attorney of record showing service has been made and how.

(g) Sealing of court records. --

(1) Except as otherwise provided by statute or rule, including this Rule 5(g) and Rule 26(c), all pleadings and other papers of any nature filed with the Clerk of the Court, including briefs, appendices, letters, deposition transcripts and exhibits, answers to interrogatories and requests for admissions, responses to requests for production or certificates and exhibits thereto ("Court Records"), shall become a part of the public record of the proceedings before this Court.

(2) Court Records or portions thereof shall not be placed under seal unless and except to the extent that the person seeking the sealing thereof shall have first obtained, for good cause shown, an order of this Court specifying those Court Records, categories of Court Records, or portions thereof which shall be placed under seal; provided, however, the Court may, in its discretion, receive and review any document in camera without public disclosure thereof and, in connection with any such review, may determine whether good cause exists for the sealing of such documents; and provided further that, unless the Court orders otherwise, the parties shall file

within 30 days redacted public versions of any Court Record where only a portion thereof is to be placed under seal.

(3) The provisions of paragraph (2) of this Rule 5(g) notwithstanding, the Court may, in its discretion, by appropriate order, authorize any person to designate Court Records to be placed under seal pending a judicial determination of the specific Court Records, categories, or portions thereof to which such restriction on public access shall continue to apply.

(4) Any person who objects to the continued restriction on public access to any Court Record placed under seal pursuant to paragraphs (2) or (3) of this Rule 5(g) shall give written notice of his or her objection to the person who designated the Court Record for filing under seal and shall file such written notice with the Court. To the extent that any person seeks to continue the restriction on public access to such Court Record, he or she shall serve and file an application within seven days after receipt of such written notice setting forth the grounds for such continued restriction and requesting a judicial determination whether good cause exists therefor. In such circumstances, the Court shall promptly make such a determination.

(5) The Clerk of the Court shall promptly unseal any Court Record in the absence of timely compliance with the provisions of this Rule 5(g), if applicable. In addition, 30 days after final judgment has been entered without any appeal having been taken therefrom, the Clerk of the Court shall send a notice, return receipt requested, to any person who designated a Court Record to be placed under seal that such Court Record shall be released from confidential treatment if required to be kept by the Clerk or, if not required to be kept, returned to the person at the person's expense or destroyed, as such person may elect, unless that person makes application to the Court within 30 days after notice from the Clerk for further confidential treatment for good cause shown.

Rule 6. Time.

(a) Computation. -- In computing any period of time prescribed or allowed by these Rules, by order of Court, or by statute, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday or Sunday, or other legal holiday, or other day on which the office of the Clerk of the Court is closed, in which event the period shall run until the end of the next day on which the office of the Clerk of the Court is open. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and other legal holidays shall be excluded in the computation. As used in this Rule, "legal holidays" shall be those days provided by statute or appointed by the Governor of the State of Delaware or the Chief Justice of the State of Delaware but if on the last day of the time period, the Court is open but officially closes early the period shall be extended to the next day the Court is open.

(b) Enlargement. -- When by these Rules or by a notice given thereunder or by order of Court an act is required or allowed to be done at or within a specified time, the Court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 50(b), 59(b), (d) and (e), 60(b), except to the extent and under the conditions stated in them.

(c) Unaffected by expiration of term. -- Repealed.

(d) For motions -- Affidavits. -- A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 2 days before the time specified for the hearing, unless a

different period is fixed by these Rules or by order of the Court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion, and, except as otherwise provided in Rule 59(c), opposing affidavits may be served not later than 1 day before the hearing, unless the Court permits them to be served at some other time.

(e) Additional time after service by mail. -- Whenever a party has the right or is required to do some act or take some proceeding within a prescribed period after being served and service is by mail, 3 days shall be added to the prescribed period.

III. PLEADINGS AND MOTIONS.

Rule 7. Pleadings allowed; form of motions.

(a) Pleadings. -- There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is served under the provisions of Rule 14; and a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the Court may order a reply to an answer or a third-party answer.

(b) Motions and other papers. --

(1) An application to the Court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion. A motion or other paper shall be filed without backer.

(2) The rules applicable to captions and other matters of form of pleadings apply to all motions, and other papers provided for by these Rules.

(3) All motions shall be signed in accordance with Rule 11.

(c) Demurrers, pleas, etc., abolished. -- Demurrers, pleas and exceptions for insufficiency of a pleading shall not be used.

(d) Size of pleadings, motions and other papers. -- Pleadings, motions and other papers shall be typewritten upon opaque, unglazed, white paper approximately 8 1/2" x 11" in size.

Rule 8. General rules of pleading.

(a) Claims for relief. -- A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim or third-party claim, shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief and (2) a demand for judgment for the relief to which the party deems itself entitled. Relief in the alternative or of several different types may be demanded.

(b) Defense; form of denials. -- A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If the party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denial shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, the pleader may make denials as specific denials of designated averments or paragraphs, or may generally deny all the averments except such designated averments or paragraphs as the pleader expressly admits; but, when the pleader does so intend to controvert all its averments, the pleader may do so by general denial subject to the obligations set forth in Rule 11.

(c) Affirmative defenses. -- In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the Court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

(d) Effect of failure to deny. -- Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

(dd) Allegations admitted unless denied by affidavit. -- The existence of a corporation or of a partnership, the signatures on an instrument upon which an action is brought and a copy of which is filed with the complaint in conformity with the statute, and the agency of the operator of a motor vehicle, shall in all cases be taken to be admitted unless the same is or are denied by affidavit, served with the answer as provided by statute.

(e) Pleading to be concise and direct -- Consistency. --

(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.

(2) A party may set forth two or more statements of a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative, and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as the party has regardless of consistency. All statements shall be made subject to the obligation set forth in Rule 11.

(f) Construction of pleadings. -- All pleadings shall be so construed as to do substantial justice.

Rule 9. Pleading special matters.

(a) Capacity. -- It is not necessary to allege the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party. When a party desires to raise an issue as to the legal existence of any party, or the capacity of any party to sue or be sued, or the authority of a party to sue or be sued in a representative capacity, the party shall do so by specific negative averment, supported by affidavit when required by Rule 8(dd), which negative averment shall include such supporting particulars as are peculiarly within the pleader's knowledge.

(b) Fraud, negligence, mistake, condition of mind. -- In all averments of fraud, negligence or mistake, the circumstances constituting fraud, negligence or mistake shall be stated with particularity. Malice, intent, knowledge and other condition of mind of a person may be averred generally.

(c) Conditions precedent. -- In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity.

(d) Official document or act. -- In pleading an official document or official act it is sufficient to aver that the document was issued or the act done in compliance with law.

(e) Judgment. -- In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer,

it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it.

(f) Time and place. -- For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

(g) Damages. -- A pleading, whether a complaint, counterclaim, cross-claim or a third-party claim, which prays for unliquidated money damages, shall demand damages generally without specifying the amount, except when items of special damage are claimed, they shall be specifically stated. Upon service of a written request by another party, the party serving such pleading shall, within 10 days after service thereof serve on the requesting party a written statement of the amount of damages claimed; such statement shall not be filed except on order of the Court.

Rule 10. Form of pleadings.

(a) Caption: Names of parties. -- Every pleading shall contain a caption setting forth the name of the Court, the title of the action, the file number, and a designation as in Rule 7(a). In the complaint the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.

(b) Paragraphs: Separate statements. -- All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

(c) Adoption by reference: Exhibits. -- Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

(d) Form of papers. -- Pleadings or other papers to be filed shall be plainly written or printed and unbacked, and if materially defaced by erasures or interlineations, shall not be received by the Clerk of the Court without a Judge's order.

Rule 11. Signing of pleadings, motions, and other papers: Representations to Court, sanctions.

(a) Signature. -- Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. Except when otherwise specifically provided by statute or rule, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless it is corrected promptly after the omission of the signature is called to the attention of the attorney or party. If a pleading, motion or other paper is not signed it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant.

(b) Representations to Court. -- By representing to the Court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying to the best of the person's knowledge, information, and belief formed after an inquiry reasonable under the circumstances:

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument, for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support, or if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence, or if specifically so identified, are reasonably based on a lack of information or belief.

(c) Sanctions. -- If, after notice, and a reasonable opportunity to respond, the Court determines that subdivision (b) has been violated, the Court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

(1) How initiated. --

(A) By motion. -- A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 5, but shall not be filed with or presented to the Court unless, within 21 days after the service of the motion (or such other period as the Court may prescribe), the challenged paper, claim, defense, contention, allegation or denial is not withdrawn or appropriately corrected. If warranted, the Court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(B) On Court's initiative. -- On its own initiative, the Court may enter an order describing a specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.

(2) Nature of sanction: Limitations. -- A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of or include, directives of a nonmonetary nature, an order to pay a penalty into Court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorney's fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2).

(B) Monetary sanctions may not be awarded on the Court's initiative unless the Court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party, which is, or whose attorneys are, to be sanctioned.

(3) Order. -- When imposing sanctions, the Court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

(d) Inapplicability to discovery. -- Subdivisions (a) through (c) of this rule do not apply to disclosures and discovery requests, responses, objections, and motions that are subject to the provisions of Rules 26 through 37.

Rule 12. Defenses and objections -- When and how represented -- By pleading or motion -- Motion for judgment on pleadings.

(a) Time. -- A defendant shall serve an answer within 20 days after service of process, complaint and affidavit, if any, upon that defendant, unless the Court directs otherwise when service of process is made pursuant to Rule 4(f)(1)(VI). If a defendant appears before service is made upon that defendant, that defendant shall serve an answer within 20 days after appearance. A party served with a pleading stating a cross-claim against that party shall serve an answer thereto within 20 days after the service upon that party. The plaintiff shall serve a reply to a counterclaim in the answer within 20 days after service of the answer or, if a reply is ordered by the Court, within 20 days after service of the order, unless the order otherwise directs. The service of a motion permitted under this rule alters these periods as follows, unless a different time is fixed by order of the Court:

(1) If the Court denies the motion or postpones its disposition until the trial on the merits, the responsive pleadings shall be served within 10 days after notice of the Court's action.

(2) If the Court grants a motion for a more definite statement, the responsive pleading shall be served within 10 days after the service of the more definite statement.

(3) If, under the statute, an affidavit of demand could be filed in any cross-claim, counter-claim or third-party claim, if such claim had been the subject of a separate action, an affidavit of demand in conformity with the statute may be served with this pleading asserting such claim. If such affidavit of demand is served, the party served shall, within 20 days after service, either move that judgment be refused notwithstanding the affidavit of demand or, serve with the pleading an affidavit of defense in conformity with the statute.

(b) How presented. -- Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) Lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under Rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief. If on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(c) Motion for judgment on the pleadings. -- After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(d) Preliminary hearings. -- The defenses specifically enumerated (1) -- (7) in subdivision (b) of this rule, whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (c) of this rule, shall be heard and determined before trial on application of any party unless the

Court orders that the hearing and determination thereof be deferred until the trial.

(e) Motion for more definite statement. -- If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the Court is not obeyed within 10 days after notice of the order or within such other time as the Court may fix, the Court may strike the pleading to which the motion was directed or make such order as it deems just.

(f) Motion to strike. -- Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these Rules, upon motion made by a party, within 20 days after the service of the pleading upon the party or upon the Court's own initiative at any time, the Court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

(g) Consolidation of defenses in motion. -- A party who makes a motion under this Rule may join with it any other motions herein provided for and then available to the party. If a party makes a motion under this rule but omits therefrom any defense or objection then available to the party which this rule permits to be raised by motion, the party shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in paragraph (h)(2) hereof on any of the grounds there stated.

(h) Waiver or preservation of certain defenses. --

(1) A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived (A) if omitted from a motion in the circumstances described in paragraph (g), or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under Rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits.

(3) Whenever it appears by suggestion of the parties or otherwise that the Court lacks jurisdiction of the subject matter, the Court shall dismiss the action.

Rule 13. Counterclaim and cross-claim.

(a) Compulsory counterclaims. -- A pleading shall state as a counterclaim any claim which at the time of serving the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the Court cannot acquire jurisdiction. But the pleader need not state the claim if (1) at the time the action was commenced the claim was the subject of another pending action, or (2) the opposing party brought suit upon the claim by attachment or other process by which the Court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any counterclaim under this Rule.

(b) Permissive counterclaims. -- A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

(c) Counterclaim exceeding opposing claim. -- A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim

relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

(d) Omitted.

(e) Counterclaim maturing or acquired after pleading. -- A claim which either matured or was acquired by the pleader after serving a pleading may, with the permission of the Court, be presented as a counterclaim by supplemental pleading.

(f) Omitted counterclaim. -- When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, the pleader may by leave of court set up the counterclaim by amendment.

(g) Cross-claim against coparty. -- A pleading may state as a cross-claim any claim by one party against a coparty arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein, or relating to any property that is the subject matter of the original action. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

(h) Joinder of additional parties. -- Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of Rules 19 and 20.

(i) Separate trials; separate judgments. -- If the Court orders separate trials as provided in Rule 42(b), judgment on a counterclaim or cross-claim may be rendered in accordance with the terms of Rule 54(b) when the Court has the jurisdiction to so do, even if the claims of the opposing party have been dismissed or otherwise disposed of.

Rule 14. Third-party practice.

(a) When defendant may bring in a third party. -- At any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff. The third-party plaintiff need not obtain leave to make the service if the third-party plaintiff files the third-party complaint not later than 10 days after serving the original answer. Otherwise, the third-party plaintiff must obtain leave on motion upon notice to all parties to the action. The person served with the summons and third-party complaint, hereinafter called the third-party defendant, shall make any defenses to the third-party plaintiff's claim as provided in Rule 12 and any counter-claims against the third-party plaintiff and cross-claims against other third-party defendants as provided in Rule 13. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against a third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant shall thereupon assert any defenses as provided in Rule 12 and any counterclaims and cross-claims as provided in Rule 13. Any party may move to strike the third-party claim and for its severance or separate trial. A third-party defendant may proceed under this Rule against any person not a party to the action who is or may be liable to the third-party defendant for all or part of the claim made in the action against the third-party defendant.

(b) When plaintiff may bring in third party. -- When a counterclaim is asserted against a plaintiff, the plaintiff may cause a third party to be

brought in under the circumstances which under this Rule would entitle a defendant to do so.

Rule 15. Amended and supplemental pleadings.

(a) Amendments. -- A party may amend a party's pleadings once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, a party may so amend it at any time within 20 days after it is served. Otherwise, a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the Court otherwise orders.

(aa) Form of amendments. -- A party serving an amended pleading shall indicate plainly in the amended pleading in what respect the amendment differs from the pleading which it amends.

(b) Amendments to conform to the evidence. -- When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the Court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the Court that the admission of such evidence would prejudice the objecting party in maintaining that party's action or defense upon the merits. The Court may grant a continuance to enable the objecting party to meet such evidence.

(c) Relation back of amendments. -- An amendment of a pleading relates back to the date of the original pleading when:

(1) relation back is permitted by the law that provides the statute of limitations applicable to the action, or

(2) the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, or

(3) the amendment changes the party or the naming of the party against whom a claim is asserted if the foregoing provision (2) is satisfied and, within the period provided by statute or these Rules for service of the summons and complaint, the party to be brought in by amendment (A) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and (B) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party.

(d) Supplemental pleadings. -- Upon motion of a party the Court may, upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the Court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefor.

Rule 16. Pretrial procedure; formulating issues.

In any action, the Court may in its discretion direct the attorneys for the parties and any unrepresented parties to appear before it for a conference to consider:

(1) The simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings;

(3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;

(4) The limitation of the number of expert witnesses;

(5) The advisability of a preliminary reference of issues to a Commissioner for findings to be used as evidence at trial;

(6) Such other matters as may aid in the disposition of the action.

The Court shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice.

Rule 16.1. Alternative dispute resolution.

(a) Actions Subject to ADR. -- All civil actions, except those actions listed in subsection (d) hereof, (1) in which trial is available (2) monetary damages are sought (3) any nonmonetary claims are nominal and (4) counsel for claimant has not certified that damages do not exceed fifteen thousand dollars ($15,000) exclusive of costs and interest, are subject to compulsory alternative dispute resolution (hereinafter "ADR").

(b) Forms of ADR. --

(1) Arbitration. -- Arbitration is a process by which a neutral arbitrator hears both sides of a controversy and renders a fair decision based on the law. If the parties stipulate in writing, the decision shall be binding. Arbitration is mandatory for cases where damages are $15,000 or more or by agreement for cases under $15,000 exclusive of interests and costs.

(2) Mediation. -- Mediation is an option by which a trained neutral facilitates the parties in reaching a mutually acceptable resolution of a controversy. It includes all contacts between the mediator and any party or parties, until a resolution is agreed to, the parties discharge the mediator, or the mediator finds the parties cannot agree.

(3) Neutral Assessment. -- Neutral assessment is an option by which an experienced neutral gives a non-binding, reasoned, oral or written evaluation of a controversy, on its merits, to the parties. The neutral assessor may use mediation techniques to aid the parties in reaching a settlement and shall prepare a binding settlement agreement, if the parties consent.

(c) Choice of ADR. -- In all civil actions subject to ADR, the plaintiff shall select a form of ADR on the Case Information Sheet (CIS Form) when a complaint is filed, and each defendant shall, in the initial pleading filed, accept or reject the plaintiff's ADR selection.

(1) If a defendant does not reject the plaintiff's choice of ADR, the court will schedule the selected ADR.

(2) If any defendant rejects the plaintiff's choice of ADR, the Court will schedule mandatory arbitration in cases where damages over $15,000 or above exclusive of interest and costs.

(d) Civil Actions Not Subject to ADR. -- The following civil actions shall not be referred to ADR but the parties may stipulate to a form of ADR:

(1) An action involving a matter listed in Court of Common Pleas Civil Rule 81(a),

(2) A replevin, foreign or domestic attachment, interpleader, or

(3) Any in forma pauperis action where the claims are substantially non-monetary; or

(4) An action to enforce a statutory penalty.

(e) Responses. -- Each plaintiff filing an action subject to ADR and each defendant filing a responsive pleading and/or motion shall simultaneously file the interrogatories and sworn statements required by Civil Rule 3(h) and 5(b), except:

(1) In an action in which counsel for claimant(s), or a claimant, if unrepresented, certifies to the Court that a potential defendant(s) cannot be ascertained at the time of the filing of the complaint, the case shall not be referred for ADR until ninety (90) days after the filing of all initial responsive pleadings, during which ninety (90) day period any party may conduct discovery limited to the identity of a potential defendant(s);

(2) In an action in which a defendant requests a physical examination of a claimant, whose physical condition is in issue, and the claimant has not submitted to a physical examination at the request of that defendant prior to the filing of the complaint; but such interrogatories and sworn statements shall be filed by the defendant within ten (10) days following receipt of the physician's report by defendant.

(3) In an action in which a request for a physical examination is made at the time of filing of the initial responsive pleading, the case shall not be assigned for ADR until the physical examination has been completed or the expiration of ninety (90) days from the request, whichever first occurs; but such interrogatories and sworn statements shall be filed by the defendant within ten (10) days following receipt of the physician's report by defendant.

(4) In an action whether or not a request for physical examination is made, the defendant may issue subpoenas duces tecum pursuant to Court of Common Pleas Civil Rule 45 for records of health care providers who have provided medical care or services to the plaintiff since the date of the incident at issue in the action but not to exceed ten (10) years prior to such date.

(f) Attachments to Pleadings. -- Subject to a motion to compel to be filed with the Judge assigned to the case:

(1) The party alleging personal injuries shall, within 5 days of the entry of appearance by the defendant, serve Defendant with all medical records and reports to the required response under Court of Common Pleas Civil Rule 3(h).

(2) All expert witness reports which a party intends to rely upon at the ADR hearing shall be attached to the Complaint under Court of Common Pleas Civil Rule 3(a) and to the answer under Court of Common Pleas Civil Rule 5(b).

(g) Defense Medical Examination. -- A party answering a complaint which alleges personal injuries to a plaintiff may require a defense medical examination of the plaintiff at the answering party's cost by attaching to the answer a request for defense medical examination, setting forth the name and business address of the physician, and the date and time of the examination. Copies of the report obtained shall be provided to all parties and the ADR Practitioner.

(h) Selection of the ADR Practitioner. -- All actions subject to ADR pursuant to this Rule will be referred for the selected choice of ADR by the Chief Judge of this Court or the Chief Judge's designee.

(1) An ADR Practitioner for either an arbitration, mediation, or neutral assessment may be selected by agreement of the parties by stipulation signed and filed with the Court not later than ten (10) business days after the civil action is referred to ADR; (See Form 35).

(2) The Court shall select the ADR Practitioner from a list as provided herein. If a stipulation is not filed:

(A) Arbitration -- General. -- The list of active arbitrators shall consist of all members of the Delaware Bar actively engaged in the practice of law for more than five years, volunteer members and retired judges of the State Judiciary.

(B) Arbitration -- Personal Injury. -- To the extent possible, the list of active arbitrators shall consist of those members of the Delaware Bar actively engaged in the practice of law for more than five years and who have certified, in writing, to the court that they have experience in personal injury litigation, volunteer members and retired judges of the State Judiciary.

(C) Mediation. -- The list of active mediators shall consist of members of the Delaware Bar who have completed 25 hours of training in conflict resolution techniques and those approved by the Chief Judge of the Court of Common Pleas, including volunteer members and retired judges of the State Judiciary. The Court shall establish classifications of disputes and shall provide that a person is eligible to serve as a mediator in a particular area of the law only if the person possesses additional credentials or completes additional specialized training, or both. In addition to training, the Chief Judge of the Court of Common Pleas may establish such further criteria for services as a mediator as is deemed necessary.

(D) Neutral Assessment. -- The list of active neutral assessors shall consist only of those members of the Delaware Bar registered with and approved by the ADR Section of the Delaware Bar Association in conjunction with the Court. In order to be approved to serve as a neutral assessor, the Practitioner shall:

(i) be a member of the Delaware Bar for at least five years;

(ii) be nominated by a member of the Delaware Bar in writing in a form approved by the ADR Section and the Court, or request, in writing, to serve as a neutral assessor;

(iii) be approved by a subsection of the ADR Section, which shall include members of the Judiciary, and the President of the Delaware State Bar Association.

(3) ADR Practitioners, when acting as such, shall be bound by Canon 3(C)(1) of the Delaware Judge's Code of Judicial Conduct.

(4) The Court shall within twenty (20) days of the referral of the case for ADR identify in writing to the parties the selected ADR Practitioner.

(i) Compensation. -- Unless otherwise stipulated in advance by the parties, the ADR Practitioner appointed, except nonretired members of the State Judiciary, shall receive compensation from the Prothonotary for services for a minimum of two (2) hours at the rate of $150 per hour of hearing time. Each party shall pay the party's share to the Prothonotary within twenty (20) days of notice of the appointment of the Practitioner. It is the obligation of each attorney, or any party appearing pro se, to timely pay the costs of ADR and any additional Practitioner's fee when billed. The ADR Practitioner may apply to the court for sanctions against any party who fails to timely pay any Practioner's fee.

(j) Discovery. -- The parties may serve and file motions and discovery as allowed by the Court of Common Pleas Civil Rules; provided, however, that all responses thereto, except as provided for under Section (e) above, shall be stayed until a request for trial de novo is filed as provided by these Rules.

(k) The ADR hearing. -- Unless otherwise ordered by the Court, an arbitration shall be scheduled in consultation with the parties within thirty (30) days of appointment and held by the arbitrator within sixty (60) days after scheduling; except that, where an answering party has requested a defense physical examination, pursuant to subsection (e)(3) of this Rule, the

hearing shall be scheduled within thirty (30) days of the receipt of the physician's report by the arbitrator. If the arbitrator is unable to schedule the hearing during this time period, the arbitrator shall immediately inform the Court of the scheduling problem.

(1) Unless the date of hearing is agreed upon by all parties, the arbitrator shall give at least ten (10) days written notice of the hearing to all parties.

(2) The arbitrator, in the arbitrator's discretion, may schedule an informal preliminary conference with the parties.

(3) The arbitration may proceed in the absence of any party who fails to appear, after notice, but an award of damages shall not be based solely upon the failure of a party to appear; except, where a claimant, after notice, fails to appear without just cause, the arbitrator shall enter a decision against the claimant without a hearing.

(4) The Rules of this Court may be used to compel the attendance of witnesses and production of documents.

(5) Unless waived by all parties, testimony shall be under oath or affirmation, administered by a notary public.

(6) The Delaware Uniform Rules of Evidence shall be used as a guide to the admissibility of evidence. Copies or photographs of all exhibits, except exhibits intended solely for impeachment, must be served upon the arbitrator and all parties at least ten (10) days prior to the hearing. The arbitrator shall consider such exhibits without formal proof unless the arbitrator and the parties have been notified at least five (5) days prior to the hearing that an adverse party intends to raise an issue concerning the authenticity of the exhibit. The arbitrator may refuse to receive into evidence any exhibit, a copy or photograph of which has not been served on an adverse party as provided herein. The arbitrator, in the arbitrator's discretion, may view or inspect exhibits or the locus involved in an action either with or without the parties and/or their attorneys.

(7) A party at its expense may, on ten (10) days prior written notice to the arbitrator and adverse party, have a recording or transcript made of the arbitration hearing.

(8) An ADR Practitioner, in the Practitioner's discretion, may adjourn the hearing for not more than ten (10) days.

(9) Each party and each attorney, unless excused by the ADR Practitioner, shall appear and participate in the arbitration hearing. A party who without being excused, fails to appear at an arbitration hearing shall not be entitled to demand a trial de novo, except upon payment of the total ADR Practitioner's fee and all Court costs incurred to date. Failure to appear and participate by any person whose attendance is required shall subject the offender to sanctions under Civil Rule 37 (d) of the Court of Common Pleas Civil Rules.

(10) The ADR Practitioner shall hear and decide all motions filed by the parties related to the case except:

(A) All case dispositive motions;

(B) Motions to by-pass arbitrations; and

(C) Motions to compel production of medical records.

(11) The ADR Practitioner shall certify as part of the order that the Practitioner has not examined and is not familiar with the amount of insurance coverage, unless such was necessary for the arbitration decision, and is not disqualified under Canon 3(C)(1) of the Delaware Judge's Code of Judicial Conduct.

(A) The ADR Practitioner shall mail the original written arbitration order, mediation settlement agreement, neutral assessment settlement agreement, or notice that the case was not resolved through ADR to the Civil Clerk with copies to each party within five (5) days following the

close of the arbitration hearing, mediation hearing or neutral assessment conference.

(B) Upon the issuance of an arbitration order, the Civil Clerk shall enter the arbitration order in an arbitration order docket.

(C) The arbitration order shall be entered as an order of judgment by any judge of the Court, upon motion of a party, after the time for requesting a trial de novo has expired. A judgment so entered shall have the same force and effect as a judgment of the Court in a civil action but shall not be subject to appeal.

(D) Within twenty (20) days after the entry of the arbitration order by the Civil Clerk any party may serve and file a written demand for a trial de novo. A demand for a trial de novo is the sole remedy of any party in any action subject to arbitration under this Rule.

(i) Upon demand for a trial de novo, the case shall be placed upon the calendar of the Court by the Civil Clerk and treated for all purposes as if it had not been referred to arbitration. Any right of trial by jury shall be preserved inviolate. The stay of motions and discovery provided by this Rule shall automatically terminate upon the service and filing of a demand for trial de novo. The time for responses to motions and discovery shall commence the date of the filing of the demand for a trial de novo.

(ii) At the trial de novo, the Court shall not admit evidence that there has been an arbitration proceeding, the nature or amount of the order, nor consider any other matter concerning the conduct or outcome of the arbitration proceeding, except recorded testimony taken at the arbitration hearing may be used in the same manner as testimony taken at a deposition.

(iii) If the party who demands a trial de novo fails to obtain a verdict from the jury or judgment from the Court, exclusive of interests and costs, more favorable to the party than the arbitrator's order, that party shall be assessed the costs of the arbitration, and the ADR Practitioner's total compensation. In addition, if the plaintiff obtains a verdict from the jury or judgment from the Court more favorable than the arbitration order, and the defendant demanded a trial de novo, interest on the amount of the arbitration order shall be payable in accordance with 6 Del. C. { 2301 beginning with the date of the order.

(E) In the event that no request for a trial de novo is timely filed and a judge, upon motion or after the time for a perfected appeal has lapsed without a motion, has entered an order of judgment the Civil Clerk shall:

(i) Record the order of judgment in the proper docket and judgment index, and

(ii) Notify each party by mail that the order has been entered as a judgment, stating the date and time of the entering of judgment, and the amount of costs assessed.

(F) Awards entered in arbitration proceedings under this Rule shall not have collateral estoppel effect in any other proceedings.

(l) The ADR Conference. -- A mediation or neutral assessment shall be scheduled in consultation with the parties within thirty (30) days of appointment of stipulation and held by the ADR Practitioner within four (4) months after scheduling, all parties and at least one attorney for each represented party must participate in the mediation conference. Sanctions may be imposed for failure to participate in good faith. All persons necessary for the resolution of the case must be present at the mediation including an insurance adjuster possessing the authority to settle the case between the last offer and the last demand made.

(1) Before mediation begins, the Civil Clerk shall provide the parties with a written statement setting forth the procedure to be followed. The parties are each required to serve upon the ADR Practitioner a Confidential

Mediation Conference Statement ten (10) days prior to the scheduled mediation.

(2) Prior to the commencement of the mediation conference, the parties, their counsel, and the ADR Practitioner shall sign a written agreement which shall include the following:

(A) The rights and obligations of parties to the mediation conference; and

(B) The confidentiality of the conference.

(3) All memoranda, work products, and other materials contained in the case files of an ADR Practitioner or the Court related to the mediation are confidential. Any communication made in or in connection with the mediation which relates to the controversy being mediated, whether made to the ADR Practitioner or a party, or to any person if made at a mediation conference, is confidential. The mediation agreement shall be confidential unless the parties otherwise agree in writing. Confidential materials and communications are not subject to disclosure in any judicial or administrative proceeding except:

(A) Where all parties to the mediation agree in writing to waive the confidentiality;

(B) In any action between the ADR Practitioner and a party to the mediation for damages arising out of the mediation; or

(C) Statements, memoranda, materials, and other tangible evidence, otherwise subject to discovery, which were not prepared specifically for use in and actually used in the mediation conference.

(4) Each mediation conference shall be an informal proceeding. Most mediations should conclude in one conference lasting one to four hours. The ADR Practitioner shall assist the parties to reach a mutually acceptable resolution of their dispute through discussion and negotiation. The ADR Practitioner may terminate the mediation conference if the parties are unable to agree. The termination shall be without prejudice to either party in any other proceeding. The ADR Practitioner or the Court shall have no authority to impose any adjudication, sanction or penalty upon the parties based solely on their failure to reach an agreement; but the Court may impose sanctions upon any party who fails to appear for mediation or fails to negotiate in good faith at a court ordered mediation. No party shall be bound by anything said or done at the mediation conference except the settlement agreement, if a settlement is reached.

(5) If the parties involved in the mediation conference reach a settlement, the agreement shall be reduced to writing and signed by the parties, the parties' counsel, and the ADR Practitioner. Unrepresented parties to the mediation shall be encouraged by the ADR Practitioner to consult with counsel prior to executing a mediation agreement. The agreement shall set forth the settlement of the issues and the future responsibilities of each party. The agreement will be binding on all parties to the agreement and, upon filing by the ADR Practitioner, will become part of the Court record. If the parties choose to keep the terms of the agreement confidential, a Stipulation of Dismissal of the pending action may be filed in the alternative.

(6) In all mediations pursuant to 6 Del. C. Ch. 77 in which the ADR Practitioner is to be selected pursuant to 6 Del. C. { 7709(f), the ADR Practitioner shall be selected in a manner consistent with the provisions of this Rule. The ADR Practitioner selected pursuant to this Rule shall be entitled to compensation in accordance with 6 Del. C. { 7713 notwithstanding the provisions in this Rule.

(7) If the parties involved in the mediation conference do not reach a settlement, the ADR Practitioner shall file with the Civil Clerk a notice, and serve copy to each of the parties, advising that mediation was not

successful and the action shall proceed as though a written demand for a trial de novo, in an arbitration under these Rules, was filed by a party.

(m) The ADR Neutral Assessment. -- A hearing shall be limited to two hours, unless the nature of the case makes it impractical and the parties stipulate to a longer hearing.

(1) Each of the parties shall file with the neutral assessor a Confidential Neutral Assessment Hearing Statement.

(2) The neutral assessment hearing shall be confidential, unless otherwise stipulated, in writing, by the parties.

(3) Nothing in this Rule abridges the neutral assessor's ability to conclude the assessment with a mediation, providing all the mediation rules set out above are followed.

If the parties involved in the Neutral Assessment meeting do not reach a settlement, the ADR Practitioner shall file with the Civil Clerk a notice, and serve copy to each of the parties, advising that Neutral Assessment was not successful and the action shall proceed as though a written demand for a trial de novo in an arbitration, under these Rules, was filed by a party.

(n) ADR Civil Immunity. -- All ADR Practitioners, when serving as an arbitrator, mediator or neutral assessor, shall be immune from civil liability for, or resulting from, any act or omission done or made while engaged in ADR, unless an act or omission was made or done in bad faith with malicious intent, or in a manner exhibiting a willful, wanton disregard of the rights, safety, or property of another. Each ADR Practitioner shall remain bound by any confidentiality agreement signed by the parties and the Practitioner as part of the ADR.

Rule 16.2. [Deleted].

IV. PARTIES.

Rule 17. Parties plaintiff and defendant; capacity.

(a) Real party in interest. -- Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in that person's own name without joining with the party for whose benefit the action is brought; and when a statute of the United States so provides, an action for the use or benefit of another shall be brought in the name of the United States. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

(b) Omitted.

(c) Infants or incompetent persons. -- Whenever an infant or incompetent person has a representative, such as a general guardian, trustee, committee, conservator, or other like fiduciary, the representative may sue or defend on behalf of the infant or incompetent person. An infant or incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The Court shall appoint a guardian ad litem for an infant or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent person.

Rule 18. Joinder of claims and remedies.

(a) Joinder of claims. -- A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent or as alternate claims, as many claims as the party has against an opposing party.

(b) Omitted.

Rule 19. Joinder of persons needed for just adjudication.

(a) Persons to be joined if feasible. -- A person who is subject to service of process and whose joinder will not deprive the Court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the Court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and joinder of that party would render the venue of the action improper, that party shall be dismissed from the action.

(b) Determination by Court whenever joinder not feasible. -- If a person as described in paragraph (a)(1)-(2) hereof cannot be made a party, the Court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the Court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

(c) Pleading reasons for nonjoinder. -- A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in paragraph (a)(1)-(2) hereof who are not joined, and the reasons why they are not joined.

Rule 20. Permissive joinder of parties.

(a) Permissive joinder. -- All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

(b) Separate trials. -- The Court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom the party asserts no claim and who asserts no claim against the party, and may order separate trials or make other orders to prevent delay or prejudice.

Rule 21. Misjoinder and nonjoinder of parties.

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the Court on motion of any party or of its

own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

Rule 22. Interpleader.

(a) Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that the plaintiff is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of crossclaim or counterclaim. The provisions of this rule supplement and do not in any way limit the joinder of parties permitted in Rule 20.

(b) The remedy herein provided is in addition to and in no way supersedes or limits the remedy provided by the statute but actions thereunder shall be conducted in accordance with these Rules.

Rule 23. Class actions.

Omitted.

Rule 24. Intervention.

(a) Intervention of right. -- Upon timely application anyone shall be permitted to intervene in an action: (1) When a statute confers an unconditional right to intervene; or (2) when an applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) Permissive intervention. -- Upon timely application anyone may be permitted to intervene in an action: (1) When a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. In exercising its discretion the Court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) Procedure. -- A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when a statute gives a right to intervene.

Rule 25. Substitution of parties.

(a) Death. --

(1) If a party dies and the claim is not thereby extinguished, the Court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, together with the notice of hearing, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons, and may be served in any county. Unless the motion for substitution is made not later than 90 days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.

(2) In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be suggested upon the record and the action shall proceed in favor of or against the surviving parties.

(b) Incompetency. -- If a party becomes incompetent, the Court upon motion served as provided in paragraph (a) of this rule may allow the action to be continued by or against the party's representative.

(c) Transfer of interest. -- In case of a transfer of interest, the action may be continued by or against the original party, unless the Court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in paragraph (a) of this rule.

(d) Public officers; death or separation from office. --

(1) When an officer of the State of Delaware, a county, city or other governmental agency is a party to an action in an official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and the officer's successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(2) When an officer of the State of Delaware, a county, city or other governmental agency sues or is sued in an official capacity, the officer may be described as a party by an official title rather than by name; but the Court may require that the officer's name be added.

V. DEPOSITIONS AND DISCOVERY.

Rule 26. General provisions governing discovery.

(a) Discovery methods. -- Parties may obtain discovery by one or more of the following methods: Depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission.

(b) Discovery scope and limits. -- Unless otherwise limited by order of the Court in accordance with these Rules, the scope of discovery is as follows:

(1) In general. -- Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

The frequency or extent of use of the discovery methods set forth in subdivision (a) shall be limited by the Court if it determines that: (i) The discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the discovery is unduly burdensome or expensive, taking into account the parties' resources, and the importance of the issues at stake in the litigation. The Court may act upon its own initiative after reasonable notice or pursuant to a motion under subdivision (c).

(2) Insurance agreements. -- A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For

purposes of this subparagraph, an application for insurance shall not be treated as part of an insurance agreement.

(3) Trial preparation: Materials. -- Subject to the provisions of paragraph (b)(4) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under paragraph (b)(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the Court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(4) Trial preparation: Experts. -- Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivision (b)(1) of this Rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(A) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. (ii) Upon motion the Court may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to subdivision (b)(4)(C) of this Rule, concerning fees and expenses as the court may deem appropriate.

(B) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in Rule 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result, (i) the Court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subdivisions (b)(4)(A)(ii) and (b)(4)(B) of this Rule; and (ii) with respect to discovery obtained under subdivision (b)(4)(A)(ii) of this Rule the Court may require, and with respect to discovery obtained under subdivision (b)(4)(B) of this Rule the Court shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(5) Claims of privilege or protection of trial preparation materials. -- When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

(c) Protective orders. -- Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the Court or alternatively, on matters relating to a deposition taken outside the State of Delaware, a court in the state where the deposition is to be taken, may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) That the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the Court; (6) that a deposition after being sealed be opened only by order of the Court; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the Court.

If the motion for a protective order is denied in whole or in part, the Court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(d) Sequence and timing of discovery. -- Unless the Court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(e) Supplementation of responses. -- A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement the response to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement the response with respect to any question directly addressed to (A) the identity and location of persons having knowledge of discoverable matters, and (B) the identity of each person expected to be called as an expert witness at trial, the subject matter on which the person is expected to testify, and the substance of the person's testimony.

(2) A party is under a duty seasonably to amend a prior response if the party obtains information upon the basis of which (A) the party knows that the response was incorrect when made, or (B) the party knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the Court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

(f) Discovery conference. -- At any time after commencement of an action the Court may direct the attorneys for the parties to appear before it for a

conference on the subject of discovery. The Court shall do so upon motion by the attorney for any party if the motion includes:

(1) A statement of the issues as they then appear;

(2) A proposed plan and schedule of discovery;

(3) Any limitations proposed to be placed on discovery;

(4) Any other proposed orders with respect to discovery; and

(5) A statement showing that the attorney making the motion has made a reasonable effort to reach agreement with opposing attorneys on the matters set forth in the motion. Each party and each party's attorney are under a duty to participate in good faith in the framing of a discovery plan if a plan is proposed by the attorney for any party. Notice of the motion shall be served on all parties. Objections or additions to matters set forth in the motion shall be served not later than 10 days after service of the motion.

Following the discovery conference, the Court shall enter an order tentatively identifying the issues for discovery purposes, establishing a plan and schedule for discovery, setting limitations on discovery, if any; and determining such other matters, including the allocation of expenses, as are necessary for the proper management of discovery in the action. An order may be altered or amended whenever justice so requires.

Subject to the right of a party who properly moves for a discovery conference to prompt convening of the conference, the Court may combine the discovery conference with a pretrial conference authorized by Rule 16.

(g) Signing of discovery requests, responses, and objections. -- Every request for discovery or response or objection thereto made by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the request, response, or objection and state the party's address. The signature of the attorney or party constitutes a certification that the signer has read the request, response, or objection, and that to the best of the signer's knowledge, information, and belief formed after a reasonable inquiry it is: (1) Consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (3) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation. If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response or objection and a party shall not be obligated to take any action with respect to it until it is signed.

If a certification is made in violation of the rule, the Court, upon motion, or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney's fee.

(h) The use of any form of discovery which requires the opposing party to retype the document as part of the process of responding to it, requires the author of the discovery to disclose the software used to create it and offer to provide a copy in magnetic format to the party who must respond. This subsection shall apply only where all parties are represented by counsel and the technology is available. The Court in its discretion may relieve the parties of this obligation.

Rule 26A. Discovery procedures.

Repealed.

Rule 27. Deposition before action or pending appeal.

Omitted.

Rule 28. Persons before whom depositions may be taken.

(a) Within the United States. -- Within the United States or within a territory or insular possession subject to the jurisdiction of the United States, depositions shall be taken (1) before an officer authorized to administer oaths by the laws of the place where the examination is held, or (2) before a person appointed by the Court in which the action is pending. A person so appointed has power to administer oaths and take testimony. The term "officer" as used in Rules 30, 31 and 32 includes a person appointed by the Court or designated by the parties under Rule 29.

(b) In foreign countries. -- Depositions may be taken in a foreign country (1) pursuant to any applicable treaty or convention, (2) pursuant to a letter of request (whether or not captioned a letter rogatory), (3) on notice before a person authorized to administer oaths in the place where the examination is held, either by the law thereof or by the law of the United States, or (4) before a person commissioned by the Court, and a person so commissioned shall have the power by virtue of the commission to administer any necessary oath and take testimony. A commission or a letter of request shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter of request that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter of request may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter of request may be addressed "To the Appropriate Authority in (here name the country)." When a letter of request or any other device is used pursuant to any applicable treaty or convention, it shall be captioned in the form prescribed by that treaty or convention. Evidence obtained in response to a letter of request need not be excluded merely because it is not a verbatim transcript, because the testimony was not taken under oath or because of any similar departure from the requirements for depositions taken within the United States under these Rules.

(c) Disqualification for interest. -- No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.

(d) Designation of officers. -- The officers referred to in paragraphs (a) and (b) hereof may be designated in notices or commissions either by name or descriptive title and letters rogatory may be addressed "To the Appropriate Judicial Authority in (here name the state or country)."

Rule 29. Stipulations regarding discovery procedure.

Unless the Court orders otherwise, the parties may by written stipulation (1) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and (2) modify the procedures provided by these Rules for other methods of discovery, except that stipulations extending the time provided in Rules 33, 34 and 36 for responses to discovery may be made only with the approval of the Court.

Rule 30. Depositions upon oral examination.

(a) When depositions may be taken. -- After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of Court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and complaint upon any defendant, except that leave is not required (1) if a defendant has served a

notice of taking deposition or otherwise sought discovery, or (2) if special notice is given as provided in subdivision (b)(2) of this rule. The attendance of witnesses may be compelled by subpoena as provided in Rule 45. The deposition of a person confined in prison may be taken only by leave of court on such terms as the Court prescribes.

(b) Notice of examination; general requirements; special notice; method of recording; production of documents and things; deposition of organization. --

(1) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice. The party taking the deposition shall state in the notice the method by which the testimony shall be recorded. Unless the court orders otherwise, a deposition may be recorded by sound, sound-and-visual, or stenographic means, and the party taking the deposition shall bear the cost of recording. Any party may arrange for a transcription to be made from the recording of a deposition taken by nonstenographic means.

(2) Leave of court is not required for the taking of a deposition by plaintiff if the notice (A) states that the person to be examined is about to go out of the State of Delaware, and will be unavailable for examination unless the person's deposition is taken before expiration of the 30-day period, and (B) sets forth facts to support the statement. The plaintiff's attorney shall sign the notice, and the attorney's signature constitutes a certification by the attorney that to the best of the attorney's knowledge, information, and belief the statement and supporting facts are true. The sanctions provided by Rule 11 are applicable to the certification.

(3) The Court may for cause shown enlarge or shorten the time for taking the deposition.

(4) Unless otherwise agreed by the parties, a deposition shall be conducted before an officer appointed or designated under Rule 28 and shall begin with a statement on the record by the officer that includes (A) the officer's name and business address; (B) the date, time, and place of the deposition; (C) the name of the deponent; (D) the administration of the oath or affirmation to the deponent; and (E) an identification of all persons present. If the deposition is recorded other than stenographically, the officer shall repeat items (A) through (C) at the beginning of each unit of recorded tape or other recording medium. The appearance or demeanor of deponents or attorneys shall not be distorted through camera or sound-recording techniques. At the end of the deposition, the officer shall state on the record that the deposition is complete and shall set forth any stipulations made by counsel concerning the custody of the transcript or recording and the exhibits, or concerning other pertinent matters.

(5) The notice to a party deponent may be accompanied by a request made in compliance with Rule 34 for the production of documents and tangible things at the taking of the deposition. The procedure of Rule 34 shall apply to the request.

(6) A party may in the party's notice name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. The organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which

the person will testify. The persons so designated shall testify as to matters known or reasonably available to the organization. This subdivision (b)(6) does not preclude taking a deposition by any other procedure authorized in these Rules.

(7) The parties may stipulate in writing or the Court may upon motion order that a deposition be taken by telephone or other remote electronic means. For purposes of this Rule and Rules 28(a), 37(a), 37(b)(1) [omitted] and 45(a), a deposition taken by such means is taken in the jurisdiction and at the place where the deponent is to answer questions.

(c) Examination and cross-examination: Record of examination; oath; objections. -- Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of Delaware Uniform Rules of Evidence, except Rules 103 and 615. The officer before whom the deposition is to be taken shall put the witnesses on oath or affirmative and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other method authorized by subdivision (b)(4) of this rule. If requested by one of the parties, the testimony shall be transcribed. All objections made at the time of the examination to the qualifications of the officer taking the deposition, to the manner of taking it, to the evidence presented, to the conduct of any party, or to any other aspect of the proceedings, shall be noted by the officer upon the record of the deposition; but the evidence shall proceed with the testimony being taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition, and the party taking the deposition shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

(d) Schedule and duration; motion to terminate or limit examination. --

(1) From the commencement until the conclusion of a deposition, including any recesses or continuances thereof of less than five calendar days, the attorney(s) for the deponent shall not: (A) consult or confer with the deponent regarding the substance of the testimony already given or anticipated to be given, except for the purpose of conferring on whether to assert a privilege against testifying or on how to comply with a court order, or (B) suggest to the deponent the manner in which any questions should be answered. A party may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation on evidence directed by the Court, or to present a motion under paragraph (d)(3).

(2) By order, the court may limit the time permitted for the conduct of a deposition, but shall allow additional time consistent with Rule 26(c) if needed for a fair examination of the deponent or if the deponent or another party impedes or delays the examination. If the Court finds such an impediment, delay or other conduct that has frustrated the fair examination of the deponent, it may impose upon the persons responsible an appropriate sanction, including the reasonable costs and attorney's fees incurred by any party as a result thereof.

(3) At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted or defended in bad faith or in such manner as unreasonably to annoy, embarrass or oppress the deponent or party, the Court in which the action is pending or a court of competent jurisdiction in the state where the deposition is being taken may order: (A) that examination cease forthwith; (B) that the scope and manner of the taking of the deposition be limited as provided in Rule 26(c); or (C) such other relief as the Court reasonably deems to be appropriate. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the Court in which the

action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(e) Submission to witness; changes; signing. -- When the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by the witness unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days after the date when the reporter notifies the witness and counsel by mail of the availability for examination by the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless on motion to suppress under Rule 32(d) the Court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(f) Certification by officer; exhibits, copies; notice of filing. --

(1) The officer shall certify that the witness was duly sworn by the officer and that the deposition is true record of the testimony given by the witness. The certification shall be in writing and accompany the record of the deposition. Unless otherwise ordered by the Court, the officer shall securely seal the deposition in an envelope endorsed with the title of the action and marked "Deposition of (here insert name of witness)" and shall promptly transmit it to the attorney who arranged for the transcript or recording, who shall store it under conditions that will protect it against loss, destruction, tampering or deterioration. Documents and things produced for inspection during the examination of the witness, shall, upon the request of a party, be marked for identification and annexed to the deposition and may be inspected and copied by any party, except that if the person producing the materials desires to retain them, the person may (A) offer copies to be marked for identification and annexed to the deposition and to serve thereafter as originals if the person affords to all parties fair opportunity to verify the copies by comparison with originals, or (B) offer the originals to be marked for identification after giving to each party an opportunity to inspect and copy them, in which event the materials may then be used in the same manner as if annexed to the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the Court, pending final disposition of the case.

(2) Unless otherwise ordered by the court or agreed by the parties, the officer shall retain stenographic notes of any deposition taken stenographically or a copy of the recording of any deposition taken by another method. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the transcript or other recording of the deposition to any party or to the deponent.

(3) The officer taking the deposition shall give prompt notice of its filing to all other parties.

(g) Failure to attend or to serve subpoena; expenses. --

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney, pursuant to the notice, the Court may order the party giving the notice to pay to such other party the reasonable expenses incurred by the

party and that party's attorney in attending, including reasonable attorney's fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon the witness and the witness because of such failure does not attend, and if another party attends in person or by attorney because the party expects the deposition of that witness to be taken, the Court may order the party giving the notice to pay to such other party the reasonable expenses incurred by that party and that party's attorney in attending, including reasonable attorney's fees.

(h) Counsel fees on taking depositions; depositions more than 150 miles distant. -- In the case of a proposed deposition upon oral examination at a place more than 150 miles from the courthouse where the action was commenced, the Court may order or impose as a condition of denying a motion to vacate notice thereof, that the applicant shall pay the expense of the attendance of one attorney for the adversary party or parties, at the place where the deposition is to be taken, including reasonable counsel fees, which amounts shall be paid or secured prior to such examination. The amount paid on account of attorney's fees and expenses may be a taxable disbursement in the event that the applicant recovers costs of the action.

(i) Omitted.

(j) Deposition of Court employees. -- The deposition of employees of the Court of Common Pleas, in which inquiry is to be made concerning the performance of their official duties, may be taken only by leave of court on such terms as the Court prescribes. For purposes of this Rule, Court employees shall include: Judges' secretaries; court reporters; bailiffs; employees of the Presentence Office; the Court Administrator and the Administrator's staff; and employees of the Clerk of the Court.

Rule 31. Depositions of witnesses upon written questions.

(a) Serving questions; notice. -- After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45. The deposition of a person confined in prison may be taken only by leave of court on such terms as the Court prescribes.

A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating (1) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs, and (2) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Rule 30(b)(6).

Within 14 days after the notice and written questions are served, a party may serve cross-questions upon all other parties. Within 7 days after being served with cross questions, a party may serve redirect questions upon all other parties. Within 7 days after being served with redirect questions, a party may serve recross questions upon all other parties. The Court may for cause shown enlarge or shorten the time.

(b) Officer to take responses and prepare record. -- A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rule 30(c), (e), and (f), to take the testimony of the witness in response to the questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions received by the officer.

(c) Notice of filing. -- When the deposition is filed the party taking it shall promptly give notice thereof to all other parties.

Rule 32. Use of depositions in court proceedings.

(a) Use of depositions. -- At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness;

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the Court finds: (A) that the witness is dead; or, (B) that the witness is out of the State of Delaware, unless it appears that the absence of the witness was procured by the party offering the deposition; or (C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or (D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena, or (E) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

A deposition taken without leave of Court pursuant to a notice under Rule 30 (b)(2) shall not be used against a party who demonstrates that, when served with the notice, said party was unable through the exercise of diligence to obtain counsel to represent said party at the taking of the deposition; nor shall a deposition be used against a party who, having received less than 11 days notice of a deposition, has promptly upon receiving such notice filed a motion for a protective order under Rule 26 (c)(2) requesting that the deposition not be held or be held at a different time or place and such motion is pending at the time the deposition is held.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require the offeror to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

Substitution of parties pursuant to Rule 25 does not affect the right to use depositions previously taken; and, when an action in any Court of the United States or of any state has been dismissed and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor.

(b) Objections to admissibility. -- Subject to the provisions of Rule 28(b) and subdivision (d)(3) of this Rule, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(c) Effect of taking or using depositions -- Repealed.

(d) Effect of errors and irregularities in depositions. --

(1) As to notice. -- All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(2) As to disqualification of officer. -- Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) As to taking of deposition. --

(A) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(B) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(C) Objections to the form of written questions submitted under Rule 31 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within 5 days after service of the last questions authorized.

(4) As to completion and return of deposition. -- Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the officer under Rules 30 and 31 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been ascertained.

(e) Form of presentation. -- Except as otherwise directed by the Court, a party offering deposition testimony pursuant to this rule may offer it in stenographic or nonstenographic form, but, if in nonstenographic form, the party shall also provide the Court with a transcript of the portions so offered.

Rule 33. Interrogatories to parties.

(a) Availability. -- Any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

The interrogatories shall contain a reasonable amount of blank space after the question to permit the insertion of an answer unless the parties have agreed to exchange in electronic medium.

(b) Answers and objections. --

(1) Each interrogatory shall be restated as numbered and shall be answered separately and fully in writing under oath, unless it is objected to, in which event the objecting party shall state the reasons for objection and shall answer to the extent the interrogatory is not objectionable.

(2) The answers are to be signed by the person making them, and the objections signed by the attorney making them.

(3) The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories, except that a defendant may serve answers or objections within 45 days after service of the summons and complaint upon that defendant. The Court may allow a shorter or longer time.

(4) All grounds for an objection to an interrogatory shall be stated with specificity. Any ground not stated in a timely objection is waived unless the party's failure to object is excused by the Court for good cause shown.

(5) The party submitting the interrogatories may move for an order under Rule 37(a) with respect to any objection to or other failure to answer an interrogatory.

(c) Scope; use at trial. -- Interrogatories may relate to any matters which can be inquired into under Rule 26(b), and the answers may be used to the extent permitted by the rules of evidence.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the Court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pretrial conference or other later time.

(d) Option to produce business records. -- Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records or from a compilation, abstract or summary based thereof, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries. A specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.

Rule 34. Production of documents and things and entry upon land for inspection and other purposes.

(a) Scope. -- Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on the requestor's behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained, translated if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Rule 26(b) and which are in the possession, custody or control of the party upon whom the request is served; or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26(b).

(b) Procedure. -- The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

The party upon whom the request is served shall serve a written response within 30 days after the service of the request, except that a defendant may serve a response within 45 days after service of the summons and complaint upon the defendant. The Court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection

and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified and inspection permitted of the remaining parts. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

(c) Persons not parties. -- A person not a party to the action may be compelled to produce documents and things or to submit to an inspection as provided by Rule 45.

Rule 35. Physical and mental examination of persons.

(a) Order for examination. -- When the mental or physical condition (including the blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy, the Court in which the action is pending may order the party to submit to a physical or mental examination by a suitably licensed or certified examiner or to produce for examination the person in the party's custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

(b) Report of examiner. --

(1) If requested by the party against whom an order is made under Rule 35(a) or the person examined, the party causing the examination to be made shall deliver to the requestor a copy of the detailed written report of the examiner setting out the examiner's findings, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition. After delivery the party causing the examination shall be entitled upon request to receive from the party against whom the order is made a like report of any examination, previously or thereafter made, of the same condition, unless, in the case of a report of examination of a person not a party, the party shows that such party is unable to obtain it. The Court on motion may make an order against a party requiring delivery of a report on such terms as are just, and if an examiner fails or refuses to make a report the Court may exclude the examiner's testimony if offered at the trial.

(2) By requesting and obtaining a report of the examination so ordered, or by taking the deposition of the examiner, the party examined waives any privilege the party may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine the party in respect of the same mental or physical condition.

(3) This subdivision applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise. This subdivision does not preclude discovery of a report of an examiner or the taking of a deposition of the examiner in accordance with the provisions of any other Rule.

Rule 36. Requests for admission.

(a) Request for admission. -- A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of court, be served upon the

plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the Court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney, but, unless the Court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 45 days after service of the summons and complaint upon the defendant. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may, subject to the provisions of Rule 37(c), deny the matter or set forth reasons why the party cannot admit or deny it.

Each request for admission shall be restated as numbered and shall be answered separately and fully in writing.

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the Court determines that an objection is justified, it shall order that an answer be served. If the Court determines that an answer does not comply with the requirements of this Rule, it may order either that the matter is admitted or that an amended answer be served. The Court may, in lieu of these orders, determine that final disposition of the request be made at a pretrial conference or at a designated time prior to trial. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(b) Effect of admission. -- Any matter admitted under this rule is conclusively established unless the Court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Rule 16 governing amendment of a pretrial order, the Court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the Court that withdrawal or amendment will prejudice that party in maintaining the action or defense on the merits. Any admission made by a party under this Rule is for the purpose of the pending action only and is not an admission for any other purpose nor may it be used against the party in any other proceeding.

Rule 37. Failure to make discovery: Sanctions.

(a) Motion for order compelling discovery. -- A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

(1) Appropriate Court. -- An application for an order to a party may be made to the Court or, alternatively, on matters relating to a deposition taken outside the State of Delaware, to a Court in the state where the deposition is being taken. An application for an order to a deponent who is not a party shall be made to a Court in the state where the deposition is being taken.

(2) Motion. -- If a deponent fails to answer a question propounded or submitted under Rules 30 or 31, or a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.

(3) Evasive or incomplete answer or response. -- For purposes of this paragraph an evasive or incomplete answer or response is to be treated as a failure to answer or respond.

(4) Expenses and sanctions. --

(A) If the motion is granted or if the disclosure or requested discovery is provided after the motion was filed, the Court shall, after affording an opportunity to be heard, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including the attorney's fees, unless the Court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

(B) If the motion is denied, the Court may enter any protective order authorized under Rule 26(c) and shall, after affording an opportunity to be heard, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the Court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

(C) If the motion is granted in part and denied in part, the Court may enter any protective order authorized under Rule 26(c) and may, after affording an opportunity to be heard, apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(b) Failure to comply with order. --

(1) Omitted.

(2) Sanctions by Court. -- If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under paragraph (a) of this Rule or Rule 35, the Court may make such orders in regard to the failure as are just, and among others the following:

(A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(D) In lieu of any of the forgoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;

(E) Where a party has failed to comply with an order under Rule 35(a) requiring that party to produce another for examination, such orders as are listed in paragraphs (A), (B), and (C) of this subdivision, unless the party failing to comply shows that the party is unable to produce such persons for examination.

In lieu of any of the foregoing orders, or in addition thereto, the Court shall require the party failing to obey the order or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the Court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(c) Expenses on failure to admit. -- If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the requesting party may apply to the Court for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The Court shall make the order unless it finds that (1) the request was held objectionable pursuant to Rule 36(a), or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had reasonable ground to believe that the party might prevail on the matter, or (4) there was other good reason for the failure to admit.

(d) Failure of party to attend at own deposition or serve answers to interrogatories or respond to request for inspection. -- If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails (1) to appear before the officer who is to take the deposition, after being served with a proper notice, or (2) to serve answers or objections to interrogatories submitted under Rule 33, after proper service of the interrogatories, or (3) to serve a written response to a request for inspection submitted under Rule 34, after proper service of the request, the Court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take action authorized under paragraphs (A), (B), and (C) of subdivision (b)(2) of this Rule. In lieu of any order or in addition thereto, the Court shall require the party failing to act or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the Court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this paragraph may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by Rule 26(c).

(e) Presentation of motions. -- All motions which are filed pursuant to Rule 26(c), 26(d) or 37 of the Court of Common Pleas Civil Rules, with the exception of motions filed during the pendency of an oral deposition, shall be presented to the Court as follows:

(1) No motion shall be filed pursuant to Rule 26(c), 26(d) or 37 of the Court of Common Pleas Civil Rules, and no such motion shall be accepted by the Clerk, unless such motion shall include a certification by the moving party detailing the dates, time spent, and method of communication in attempting to reach agreement on the subject of the motion with the other party or parties and the results, if any, of such communication, provided that the certification shall not be required for motions filed pursuant to Rule 37(d) of the Court of Common Pleas Civil Rules.

(2) The motion shall be filed at least 10 days prior to the date noticed for presentation of the motion to the Court. The motion shall not exceed 4 pages of letter size paper (8 1/2" x 11") and shall contain all

authorities and facts which the moving party desires to bring to the attention of the Court.

(3) At least 3 days prior to the date noticed for presentation of the motion, if any other party to the action desires to oppose or take any position with respect to the motion, such party shall file a responsive pleading which shall not exceed 4 pages of letter size paper (8 1/2" x 11"). The responsive pleading shall contain all authorities and facts which the responding party desires to present to the Court. Failure to file a responsive pleading shall constitute a waiver of any opposition to the motion.

(4) There shall be no written reply to the responsive pleading to the motion.

(5) There shall be no further briefing on any motion filed pursuant to Rule 26(c), 26(d) or 37 of the Court of Common Pleas Civil Rules, except upon order of the Court for good cause shown at oral argument.

(6) Oral argument on any motion filed pursuant to Rule 26(c), 26(d) or 37 of the Court of Common Pleas Civil Rules shall be limited to no more than a total of 15 minutes which time shall be divided equally. At the argument any party may apply for further briefing and the Court shall rule on the application at that time.

(7) Whenever possible, the Court shall decide the motion at the oral argument. The Court hearing the oral argument may reserve decision or in the Court's discretion may schedule such further proceedings as the Court shall deem necessary.

(8) If the attorney for the moving party or an attorney for a party opposing the motion filed pursuant to Rule 26(c), 26(d) or 37 of the Court of Common Pleas Civil Rules shall fail to appear at the oral argument on said motion, the motion shall be summarily denied or granted as the case may be and an attorney's fee in an amount not less than $100 shall be assessed against the nonappearing attorney. The sum shall be paid to the Clerk and the Clerk shall promptly forward it to the appearing party. The Clerk shall not accept further filings of any type in the action from the attorney who did not appear until the attorney's fee is paid.

(f) Failure to participate in the framing of a discovery plan. -- If a party or a party's attorney fails to participate in good faith in the framing of a discovery plan by agreement as required by Rule 26(f), the Court may, after opportunity for hearing, require such party or attorney to pay to any other party the reasonable expenses, including attorney's fees, caused by the failure.

VI. TRIALS.

Rule 38. Jury trial of right.

Omitted.

Rule 39. Trial by jury or by the Court.

Omitted.

Rule 40. Assignment of cases for trial, continuances.

(a) Trial list. -- The Clerk of the Court under the direction of the Court shall prepare as often as the Court deems necessary a trial list of all cases ready for trial and argument.

(b) Omitted.

(c) Continuance; absence of material witness. -- Every motion for continuance upon the ground of the absence of, or unavailability of, a material witness shall be filed as soon as said absence or unavailability becomes known and shall be accompanied by an affidavit on behalf of the party applying therefor, setting forth the facts which the party expects to prove by such witness, the efforts made to procure the witness's attendance, and the date when the absence or unavailability of the witness became known. If it be stipulated by the opposite party that the witness if called would

testify as set forth in the affidavit, the Court, in its discretion, may refuse the motion, and under such circumstances, the affidavit may be offered in evidence at the trial.

Rule 41. Dismissal of actions.

(a) Voluntary dismissal; effect thereof. --

(1) By plaintiff; by stipulation. -- An action may be dismissed by the plaintiff without order of court (I) except in replevin, by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment whichever first occurs or (II) by filing a stipulation of dismissal signed by all the parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action based on or including the same claim.

(2) By order of Court. -- Except as provided in paragraph (1) of this subdivision of this Rule, an action shall not be dismissed at the plaintiff's instance save upon order of the Court and upon such terms and conditions as the Court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon defendant of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the Court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

(b) Involuntary dismissal; effect thereof. -- For failure of the plaintiff to prosecute or to comply with these Rules or any order of Court, a defendant may move for dismissal of an action or of any claim against the defendant. After the plaintiff, in an action tried by the Court without a jury, has completed the presentation of plaintiff's evidence, the defendant, without waiving the right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The Court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. Unless the Court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this Rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, operates as an adjudication upon the merits.

(c) Dismissal of counterclaim, cross-claim or third-party claim. -- The provisions of this Rule apply to the dismissal of any counterclaim, cross-claim, or third-party claim. A voluntary dismissal by the claimant alone pursuant to paragraph (1) of subdivision (a) of this Rule shall be made before a responsive pleading is served or, if there is none, before the introduction of evidence at the trial or hearing.

(d) Costs of previously dismissed action. -- If a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the Court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.

(e) Dismissal for failure to prosecute. -- The Court may order an action dismissed, sua sponte, upon notice of the Court, for failure of a party diligently to prosecute the action, for failure to comply with any rule, statute, or order of the Court, or for any other reason deemed by the Court to be appropriate. In the event that the Court shall conclude, sua sponte, that dismissal upon any of foregoing grounds appears appropriate, the procedure for such dismissal shall be as follows: The Clerk shall forward to

the party a notice directing that the party show cause why the action should not be dismissed for the reasons stated in the notice. The notice shall direct the party to respond within 10 days after receipt of the notice. After consideration of such response, the Court shall enter an order dismissing the action or maintaining jurisdiction of the case. If a response is not filed within the time allowed, the dismissal shall be deemed to be unopposed. If the Court is satisfied that the action should be dismissed, it shall enter an order of dismissal. Upon entry of any order of dismissal, the Court shall specify the terms thereof including provision for payment of costs. In the case of any action which has been pending in this Court for more than six months without any proceedings having been taken therein during that six month period, the Clerk of the Court shall, after the expiration of the period, mail to the parties a notice notifying them that the action will be dismissed by the Court for want of prosecution if no proceedings are taken therein within 30 days. If no proceedings are taken in the action within a period of 30 days after the mailing of such notice, it shall thereupon be dismissed by the Court as of course for want of prosecution. Such actions may also be dismissed for want of prosecution at any time by motion of any party.

(f) Without prior notice. -- The Court may order a complaint, petition or appeal dismissed, sua sponte, without notice, notwithstanding the provisions of Rule 41(e), when such complaint, petition or appeal manifestly fails on its face to invoke the jurisdiction of the Court and where the Court concludes, in the exercise of its discretion, that the giving of notice would serve no meaningful purpose and that any response would be of no avail.

Rule 42. Consolidation; separate trials.

(a) Consolidation. -- When actions involving a common question of law or fact are pending before the Court, it may order a joint hearing or trial of any or all matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

(b) Separate trials. -- The Court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues.

Rule 42.1. Opening statements by attorneys.

Omitted.

Rule 43. Taking of testimony: Conferences during trial.

(a) Form. -- In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by statute, by the Delaware Uniform Rules of Evidence, by these rules, or by order for cause.

(b) Conferences during trial. -- All sidebar conferences and chambers conferences during trial shall be recorded unless the trial judge determines, in advance, that neither evidentiary nor substantive issues are involved.

(c) Affirmation in lieu of oath. -- Whenever under these Rules an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

(d) Evidence on motions. -- When a motion is based on facts not appearing of record the Court may hear the matter on affidavits presented by the respective parties, but the Court may direct that the matter be heard wholly or partly on oral testimony or deposition.

(e) Interpreters. -- The Court may appoint an interpreter of its own selection and may fix reasonable compensation. The compensation shall be paid out of funds provided by law or by one or more of the parties as the Court may direct, and may be taxed ultimately as costs, in the discretion of the Court.

Rule 44. Proof of official records.

(a) Authentication. --

(1) Domestic. -- An official record kept within the United States, or any state, district, or commonwealth, a territory subject to the administrative or judicial jurisdiction of the United States, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof, or by a copy attested by the officer having the legal custody of the record, or by the officer's deputy, and accompanied by a certificate that such officer has the custody. The certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the Court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of the officer's office.

(2) Foreign. -- A foreign official record, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof; or a copy thereof, attested by a person authorized to make the attestation, and accompanied by a final certification as to the genuineness of the signature and official position (i) of the attesting person, or (ii) of any foreign official whose certificate of genuineness of signature and official position relates to the attestation or is in a chain of certificates of genuineness of signature and official position relating to the attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of the documents, the Court may, for good cause shown, (i) admit an attested copy without final certification or (ii) permit the foreign official record to be evidenced by an attested summary with or without a final certification. The final certification is unnecessary if the record and the attestation are certified as provided in a treaty or convention to which the United States and the foreign country in which the official record is located are parties.

(b) Lack of record. -- A written statement that after diligent search no record or entry of a specified tenor is found to exist in the records, designated by the statement, authenticated as provided in subdivision (a)(1) of this Rule in the case of a domestic record, or complying with the requirements of subdivision (a)(2) of this Rule for a summary in the case of a foreign record, is admissible as evidence that the records contain no such record or entry.

(c) Other proof. -- This Rule does not prevent the proof of official records or of entry or lack of entry therein by any other method authorized by law.

Rule 44.1. Determination of foreign law.

A party who intends to raise an issue concerning the law of a foreign country shall give notice in the party's pleadings or other reasonable written notice. The Court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Delaware Rules of Evidence. The Court's determination shall be treated as a ruling on a question of law.

Rule 45. Subpoena.

(a) For attendance of witnesses; form; issuance. -- Every subpoena shall be issued by the Clerk of the Court under the seal of the Court, shall state the name of the Court and the title of the action, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified. The party requesting the issuance of a subpoena shall prepare a form thereof for signature by the Clerk of the Court under the seal of the Court. Blank forms shall be provided by the Clerk of the Court on request of a party. The Clerk of the Court shall issue a subpoena, or a

subpoena for the production of documentary evidence, signed and sealed but otherwise in blank, to a party requesting it, who shall fill it in before service.

(b) For production of documentary evidence. -- A subpoena may also command the person to whom it is directed to produce the books, papers, documents or tangible things designated therein; but the Court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (1) quash or modify the subpoena if it is unreasonable and oppressive or (2) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(c) Service. -- A subpoena may be served by the sheriff, by the Sheriff's deputy or by any other person who is not a party and is not less than 18 years of age. Service of the subpoena upon a person named therein shall be made by delivering a copy thereof to such a person.

(d) Subpoena for taking depositions. -- A party issuing a notice of deposition provided for in Rules 30(b) and 31(a) may serve a subpoena as provided for in paragraph (a) of this Rule. The subpoena may command the person to whom it is directed to produce and permit inspection and copying of designated books, papers, documents or tangible things which constitute or contain matters within the scope of the examination permitted by Rule 26(b), but in that event the subpoena will be subject to the provisions of Rule 26(c) and subdivision (b) of this Rule. The person to whom the subpoena is directed may, within 10 days after the service thereof or on or before the time specified in the subpoena for compliance, if such time is less than 10 days after service, serve upon the attorney designated in the subpoena written objections to inspection or copying of any or all of the designated materials. If objection is made, the party serving the subpoena shall not be entitled to inspect or copy the materials except pursuant to an order of the Court from which the subpoena was issued. The party serving the subpoena may, if objection has been made, move upon notice to the deponent for an order at any time on or before the taking of the deposition.

The attendance of witnesses and the production by them of designated documents or tangible things taken at depositions elsewhere than in the State of Delaware may be compelled by whatever means are available under the laws of the place where the examination is held.

(e) Medical records. -- The following procedure shall govern production of medical records under subpoena for trial purposes:

(i) In responding to a subpoena calling for the production of medical records belonging to a hospital or other institution having custody of medical records or records relating to the physical or mental condition of a party, it will be considered that the institution has complied if it delivers within 10 days of receipt of the subpoena, or on the trial date set forth in the subpoena, whichever is sooner, either personally or by registered mail, return receipt requested, or by certified mail, to the Clerk of the Court issuing the subpoena, the original record, including all documents and x-rays relating to the medical record, and meets all the other requirements hereinafter stated.

(ii) The aforesaid shall be accompanied by a sworn certificate signed by the medical records librarian or an authorized official of the institution involved verifying that it is the complete original medical record subpoenaed.

(iii) The documents and x-rays so delivered shall be kept in the custody of the Clerk of the Court issuing the subpoena, in the envelope or envelopes in which they are supplied by the institution. This envelope shall be clearly marked to identify the contents, the name of the patient, the

title and number of the court case, and shall be of a distinctive type and form approved by the Court. The Clerk of the Court shall be charged with the custody and preservation of the envelope and its contents and shall not release them from the Clerk's custody except upon the Court's order or as otherwise provided herein. However, the Clerk shall permit counsel for any party in the case for which the medical records were furnished or any party thereto who is unrepresented by counsel to inspect or copy such records while they remain within the custody of the Clerk.

(iv) The admissibility of the contents of the medical record shall be in no way affected or altered by these procedures and shall remain and be subject to the same rulings by the Court and objections by trial counsel as would exist if the original records were personally produced by the subpoenaed party, except that the certification referred to in subparagraph (ii) above shall constitute sufficient evidence of genuineness of the record.

(v) The contents of the record as aforesaid shall be preserved and maintained as a cohesive unit and shall not be separated or released except as provided herein or upon the order of the Court. Forty days after any final notice, stipulation or order dismissing or otherwise terminating any case in which medical records have been subpoenaed, if no appeal is in process, or, in the event of appeal proceedings, after any final order terminating the same, said records shall be returned to the institution. It shall be the responsibility of the institution to arrange to take delivery of the records at the office of the Clerk.

(vi) Upon receipt of the documents and x-rays in connection with any pending action, the Clerk shall promptly notify all attorneys of record in the case in which the subpoena was issued that the documents involved have been delivered to the Court pursuant to the procedure outlined above. For purposes of this notice it will be considered adequate for the Clerk to inform the attorneys of the receipt of the record, the title and number of the case, and the name of the person to whom the record relates.

(vii) Compliance with the foregoing procedures shall be generally construed as full compliance with the subpoena. In availing itself of the option afforded by this rule in responding to a subpoena, the institution shall take such action as the Court may direct on application of any party.

(f) Contempt. -- Failure by any person without adequate excuse to obey a subpoena served upon the person may be deemed a contempt.

Rule 46. Exceptions unnecessary.

Formal exceptions to rulings or orders of the Court are unnecessary; but for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the Court is made or sought, makes known to the Court the action which the party desires the Court to take or the party's objection to the action of the Court and the party's grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice the party.

Rule 47. Jurors.

Omitted.

Rule 48. Juries of less than 12 -- Majority verdict.

Omitted.

Rule 49. Special verdicts and interrogatories.

Omitted.

Rule 50. Motion for a directed verdict and for judgment notwithstanding the verdict.

(a) Motion for directed verdict; when made; effect. -- A party who moves for a directed verdict at the close of the evidence offered by an opponent may offer evidence in the event that the motion is not granted, without having reserved the right so to do and to the same extent as if the motion

had not been made. A motion for a directed verdict shall state the specific grounds therefor.

(b) Motion for judgment notwithstanding the verdict. -- Not later than 10 days after entry of judgment, a party who has moved for a directed verdict may move to have the judgment entered thereon set aside and to have judgment entered in accordance with the party's motion for directed verdict. A motion for new trial may be joined with this motion, or a new trial may be prayed for in the alternative. The Court may allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as a matter of law.

Rule 51. Instructions to jury; objection.

Omitted.

Rule 52. Findings by the Court.

Omitted.

Rule 53. Masters.

Omitted.

VII. JUDGMENT.

Rule 54. Judgment; costs.

(a) Definition. -- "Judgment" as used in these Rules includes any order from which a writ of error or an appeal lies.

(b) Judgment upon multiple claims. -- When more than 1 claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, the Court may direct the entry of a final judgment upon one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

(c) Omitted.

(d) Costs. -- Except when express provision therefor is made either in a statute or in these Rules or in the Rules of the Supreme Court, costs shall be allowed as of course to the prevailing party unless the Court otherwise directs.

(e) Unnecessary costs. -- If at any time during the progress of an action it appears to the Court that the amount claimed is exorbitant so that the opposite party is put to unnecessary expense in giving bond, or if any party unnecessarily swells the record or otherwise causes unnecessary expense, the Court may, in its discretion, order such unnecessary expense to be taxed against the party causing the same, without regard to the outcome of the action.

(f) The fees paid court reporters for the Court's copy of transcripts of depositions shall not be taxable costs unless introduced into evidence. Fees for other copies of such transcripts shall not be taxable costs. The production and playback costs associated with any videotape deposition may also be taxable as costs if the video deposition is introduced into evidence.

(g) Witness fees for those testifying on deposition shall be the same as statutory witness fees for testifying in Court and such fees shall be taxable as costs if the deposition is introduced into evidence.

(h) Expert witness fees. -- Fees for expert witnesses may be taxed as costs in the discretion of the Court.

Rule 55. Default judgments.

(a) Omitted.

(b) Judgment. -- Except as otherwise provided in paragraphs (bb1) and (bb2) of this rule, when a party against whom a judgment for affirmative relief is sought, has failed to appear, plead or otherwise defend as provided by these Rules, and that fact is made to appear, judgment by default may be entered as follows:

(1) By the Clerk of the Court. -- When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the Clerk of the Court upon written direction of the plaintiff and upon affidavit of the amount due, shall enter judgment against the defendant, if the defendant has failed to appear in accordance with these Rules unless the defendant is an infant or incompetent person. When a party is entitled to have the Clerk of the Court enter judgment by default pursuant to this paragraph, the party shall submit with the party's direction to the Clerk of the Court to enter judgment a statement showing the principal amount due, which shall not exceed the amount demanded in the complaint, giving credit for any payments and showing the amounts and dates thereof, and a computation of interest to the date of judgment, a statement showing the calculation of attorney's fees and the legal basis for awarding attorney's fees, if any, to which statement shall be appended an affidavit of the party or the party's attorney stating: (1) that the party against whom judgment is sought is not an infant or an incompetent person; (2) that the party has made default in appearance in the action; and (3) that the amount shown by the statement is justly due and owing and that no part thereof has been paid. The Clerk of the Court shall thereupon enter judgment for principal, interest and costs, including reasonable attorney's fees, if applicable.

(2) By the Court. -- In all other cases the party entitled to a judgment by default shall apply to the Court therefor; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a guardian, trustee or other representative. If the party against whom judgment by default is sought has appeared in the action, the party (or, if appearing by representative, the representative) shall be served with written notice of the application for judgment at least 3 days prior to the hearing on such application. If, in order to enable the Court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or, to establish the truth of any averment by evidence or to make an investigation of any other matter, the Court may conduct such hearings or order such references as it deems necessary and proper.

(bb1) Judgments for want of appearance in actions begun by capias. -- Judgments for want of appearance shall be given as provided by statute.

(bb2) Judgments in appeals under Rule 72.3. -- When an appellee having the duty of serving the complaint or other first pleading fails to do so as required by Rule 72.3(a), judgment shall be entered against appellee for failure to plead. When an appellee having the duty of serving a responsive pleading fails to do so as required by Rule 12(a), judgment by default may be entered as provided in paragraph (b) hereof.

(c) Setting aside default judgment. -- The Court may set aside a judgment by default in accordance with Rule 60(b).

(d) Plaintiffs, counterclaimants and cross-claimants. -- The provisions of this Rule apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a cross-claim or counterclaim.

Rule 56. Summary judgment.

(a) For claimant. -- A party seeking to recover upon a claim, counterclaim or crossclaim may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment and at any time prior to the marking of the case for trial, move, with or

without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof, subject to the provisions of Rule 56(bb).

(b) For defending party. -- A party against whom a claim, counterclaim or crossclaim is asserted may, at any time prior to the marking of the case for trial, move, with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof, subject to the provisions of Rule 56(bb).

(bb) Filing motion for summary judgment. -- The limitation of time for the filing of motions for summary judgments in accordance with Rule 56(a) and Rule 56(b) shall not prohibit the filing of a motion for summary judgment by any party when, as a result of a pretrial conference, in the opinion of the Court, the filing of such motion is desirable. This Rule shall not affect in any way Rule 12(b) and Rule 12(c) with respect to motions for summary judgment.

(c) Motion and proceedings thereon. -- The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) Case not fully adjudicated on motion. -- If on motion under this Rule, judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the Court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) Form of affidavits; further testimony; defense required. -- Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The Court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or affidavits. When a motion for summary judgment is made and supported as provided in this Rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this Rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

(f) When affidavits are unavailable. -- Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the Court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) Affidavits made in bad faith. -- Should it appear to the satisfaction of the Court at any time that any of the affidavits presented pursuant to

this Rule are presented in bad faith or solely for the purpose of delay, the Court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur, including reasonable attorneys fees, and any offending party or attorney may be adjudged guilty of contempt.

Rule 57. Declaratory judgment.

The procedure for obtaining a declaratory judgment pursuant to the statutes of this State shall be in accordance with these Rules. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The Court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

Rule 58. Entry of judgment.

Subject to the provisions of Rule 54(b):

(1) General verdict. -- Upon a decision by the Court that the party shall recover only a sum certain or costs or that all relief shall be denied, the Clerk of the Court, unless the Court otherwise orders, shall forthwith enter the judgment in the civil docket without awaiting any direction by the Court;

(2) Other verdicts. -- Upon a decision by the Court granting other relief, the Court shall promptly approve the form of the judgment and the Clerk of the Court shall thereupon enter it in the civil docket.

(3) Judgment. -- A judgment is effective only when so set forth and when entered. Entry of the judgment shall not be delayed for the taxing of costs. Attorneys shall not submit forms of judgment except upon direction of the Court, and these directions shall not be given as a matter of course.

Rule 58A. Transfer of judgment to Superior Court.

(a) Motion not required. -- Judgments entered into the judgment docket in the Court of Common Pleas shall not constitute a lien upon real estate pursuant to 10 Del. C. { 1325, but the judgment creditor may file a duty certified transcript of the docket entries of the judgment in the Office of the Prothonotary of the Superior Court. The Prothonotary, without necessity of a motion or an order, shall enter in his or her judgment docket the names of the parties, the amount of the judgment, the name of the court in which the judgment was recovered, the time from which interest runs and the amount of the costs, with the true date of filing and entry. The judgment, so transferred, shall, from that date, become a lien on all the real estate of the debtor in the county in the same manner and as fully as judgments rendered in the Superior Court as liens, and may be executed and enforced in the same manner as judgments of the Superior Court.

(b) Effect of filing transcript. -- The filing of a transcript with the Prothonotary constitutes a transfer of the judgment to the Superior Court.

(c) Retention of jurisdiction. -- The Court of Common Pleas shall retain jurisdiction for purposes of all post-judgment proceedings with the exception of execution upon the judgment and/or sale of real estate property.

Rule 59. New trials and rearguments.

(a) Grounds. -- A new trial may be granted to all or any of the parties and on all or part of the issues in an action in which there has been a trial for any of the reasons for which new trials have heretofore been granted in this Court. On a motion for a new trial, the Court may open the judgment if one has been entered, take additional testimony and direct the entry of a new judgment.

(b) Time and procedure for motion. -- The motion for a new trial shall be served and filed not later than 10 days after the entry of judgment. The motion shall be accompanied by a brief and affidavit, if any. The motion shall briefly and distinctly state the grounds therefor.

If the motion is not accompanied by affidavits, the opposing party, within 10 days after service of such motion, may serve and file a short answer to

each ground asserted in the motion, accompanied by a brief, if the opposing party desires to file one.

If the motion is accompanied by affidavits, the opposing party has 10 days after such service within which to serve and file that party's answer and opposing affidavits and brief, if any; this period may be extended for an additional period not exceeding 10 days either by the Court for good cause shown or by the parties by written stipulation. Reply affidavits and briefs may be served and filed within 10 days after service of the opposing affidavits and briefs; this period may be extended for an additional period not exceeding 10 days, either by the Court for good cause shown or by the parties by written stipulation.

The Court shall determine from the motion, answer, affidavits and briefs, whether a new trial shall be granted or denied or whether there shall be oral argument on the motion. A copy of the motion, answer, affidavits and briefs shall be furnished forthwith by the respective parties serving them to the Judge involved.

(c) On initiative of Court. -- Not later than 10 days after entry of judgment the Court of its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the Court may grant a motion for a new trial, timely served, for a reason not stated in the motion. In either case, the Court shall specify in the order the grounds therefor.

(d) Motion to alter or amend a judgment. -- A motion to alter or amend the judgment shall be served and filed not later than 10 days after entry of the judgment.

(e) Rearguments. -- A motion for reargument shall be served and filed within 5 days after the filing of the Court's opinion or decision. The motion shall briefly and distinctly state the grounds therefor. Within 5 days after service of such motion, the opposing party may serve and file a brief answer to each ground asserted in the motion. The Court will determine from the motion and answer whether reargument will be granted. A copy of the motion and answer shall be furnished forthwith by the respective parties serving them to the Judge involved.

Rule 60. Relief from judgment or order.

(a) Clerical mistakes. -- Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the Court at any time of its own initiative or on the motion of any party and after such notice, if any, as the Court orders.

(b) Mistake; inadvertence; excusable neglect; newly discovered evidence; fraud, etc. -- On motion and upon such terms as are just, the Court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) Mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. A motion under this subdivision does not affect the finality of a judgment or suspend its operation. This Rule does not limit the power of a Court to entertain an independent action to relieve a party from a judgment, order or proceeding, or to grant any relief provided by statute, or to set aside a judgment for fraud upon the Court, or to deal with judgments by confession as provided by law. The procedure for obtaining

relief from judgments shall be by motion as prescribed in these Rules or by an independent action.

Rule 61. Harmless error.

No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the Court or by any of the parties is ground for granting a new trial or for vacating, modifying or otherwise disturbing a judgment or order, unless refusal to take such action appears to the Court inconsistent with substantial justice. The Court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

Rule 62. Stays by trial court and on appeal.

(a) Automatic stay. -- Except as stated herein, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 10 days after its entry.

(b) Stay on motion for new trial or for judgment. -- In its discretion and on such conditions for the security of the adverse party as are proper, the Court may stay the execution of any proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule 59 or of a motion for relief from a judgment or order made pursuant to Rule 60, or of a motion for judgment in accordance with a motion for a directed verdict made pursuant to Rule 50.

(c) Stay and supersedeas on appeal from lower court. -- In any civil action in which an appeal is taken from a lower court to the Court of Common Pleas, the Court of Common Pleas may, upon motion of the appellant, stay execution on the judgment appealed from and may as a condition of such stay require the appellant to post a supersedeas bond with surety or a cash deposit. The amount of such supersedeas bond or cash deposit shall be sufficient to pay the amount of the judgment appealed from plus interest and court costs.

(d) Supersedeas or stay on writ of error. -- Supersedeas, and stay pending writ of error, and supersedeas, stay and cost bonds shall be governed by art. IV, 24 of the Constitution of the State of Delaware and by the Rules of the Supreme Court.

(e) Omitted.

(f) Stay according to statute. -- A judgment debtor is entitled to a stay of execution where such stay is accorded by statute.

(g) Omitted.

(h) Stay of judgment as to multiple claims or multiple parties. -- When a Court has ordered a final judgment under the conditions stated in Rule 54(b), the Court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

Rule 63. Disability of a judge.

If a trial or hearing has been commenced and the judge is unable to proceed, any other judge may proceed with it upon certifying familiarity with the record and determining that the proceedings in the case may be completed without prejudice to the parties. In a hearing or trial without a jury, the successor judge shall at the request of the party recall any witness whose testimony is material and disputed and who is available to testify again without undue burden. The successor judge may also recall any other witness.

VIII. PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS.

Rule 64. Provisional and final remedies and special proceedings.

(a) Generally. -- At the commencement of and during the course of an action, all remedies providing for seizure of person or property for the purpose of compelling appearance or securing satisfaction of a judgment ultimately to be entered in the action are available under the circumstances and in the manner provided by the statute.

(b) Omitted.

(c) Motion by defendant for discharge on common bail. -- Upon the serving of a motion by a defendant for discharge on common bail, the Court shall issue a rule fixing a time for hearing the motion. Unless at or before the time fixed for the hearing, the plaintiff shall file an affidavit to hold to special bail, the defendant shall be discharged upon common bail. Upon the filing by plaintiff of an affidavit to hold to special bail, the Court after hearing the parties may make such order, as it deems proper.

(d) Special bail; notice of justification. -- In all cases of taking special bail by the Clerk of the Court, reasonable notice of justification shall be given to the opposite party or that party's attorney.

Rule 64.1. Orders in rules to show cause.

A rule to show cause may be issued only when permitted by law. An order for a rule to show cause shall set forth the return date and time thereof, and shall require the respondent to answer or otherwise plead at or before the return date and time. The order shall also state whether or not a hearing upon the rule will be held at the return date and time and, if not, what action the Court contemplates will be taken.

Rule 65. Injunctions.

Omitted.

Rule 65.1. Security; proceedings against sureties.

Whenever these Rules require or permit the giving of security by a party and security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the Court and irrevocably appoints the Clerk of the Court as the surety's agent upon whom any papers affecting liability on the bond or undertaking may be served. The surety's liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the Court prescribes may be served on the Clerk of the Court who shall forthwith mail copies to the sureties if their addresses are known.

Rule 66. Receivers appointed by federal courts.

Omitted.

Rule 67. Deposit in Court.

In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money, or the disposition of any other thing capable of delivery, a party upon notice to every other party, and by leave of Court, may deposit with the Court all or any part of such sum or thing, whether or not that party claims all or any part of the sum or thing. The party making the deposit shall serve the order permitting deposit on the Clerk of the Court. Money paid into Court under this rule shall be withdrawn only upon order of the Court. The fund shall be deposited in an interest-bearing account or invested in an interest-bearing instrument approved by the Court.

Rule 68. Offer of judgment.

At any time more than 10 days before the trial begins a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against the defending party for the money or property or to the effect specified in the offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the Clerk shall enter judgment. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer. When the liability of one party to another has been

determined by a verdict or order or judgment, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than 10 days prior to the commencement of hearings to determine the amount or extent of liability.

Rule 69. Execution.

(a) In general. -- The procedure on execution shall be as heretofore.

(aa) Proceedings supplementary to judgment or execution. -- In aid of the judgment or execution, the judgment creditor or judgment creditor's successor in interest when that interest appears of record, may take discovery by deposition, interrogatories, and requests for production, in the manner provided in these Rules.

(b) Omitted.

(c) Omitted.

(d) Omitted.

(e) Omitted.

(f) Sheriff; proceeds of sales. -- The sheriff or other officer executing any writ, order or process, under which property shall be sold, shall endorse upon such writ, order or process an itemized statement of the application of the proceeds received from such sale.

(g) Omitted.

Rule 70

Omitted.

Rule 71. Process in behalf of and against persons not parties.

Omitted.

IX. APPEALS.

Rule 72. Appeals to Superior Court.

Appeals to the Superior Court from this Court shall be governed by the Rules of the Superior Court.

Rule 72.1. Appeals from the Department of Public Safety.

(a) Application of Rule. -- This Rule shall apply to appeals to the Court of Common Pleas from the Department of Safety from which an appeal may at any time lie to the Court of Common Pleas to be tried or heard on the record made below.

(b) How taken. -- When an appeal is permitted by law, a party may appeal by filing a notice of appeal with the Clerk of the Court of the appropriate county within the time prescribed by statute. If no time is prescribed by statute, the notice of appeal shall be filed within 15 days from entry of the final judgment, order, or disposition from which an appeal is permitted by law.

(c) Notice of appeal. -- The notice of appeal shall specify the parties taking the appeal, shall designate the order, award, determination, or decree, or part thereof appealed from; shall state the grounds of the appeal; shall name the Court to which the appeal is taken; and shall be signed by the attorney for the appellants.

Notification of the filing of the notice of appeal shall be given by the Clerk of the Court by mailing copies thereof to all parties to the proceeding below. No notice of appeal need be given to the party or parties taking the appeal. The failure of the Clerk of the Court to give notice of the taking of the appeal shall not affect the validity of the appeal. The notification of a party shall be given by mailing a copy of the notice of appeal to the party's attorney of record or, if the party is not represented by an attorney, then to the party at the party's last known address, and such notification is sufficient notwithstanding the death of the party or of the party's attorney prior to the giving of the notification.

(d) Docket entries. -- The Clerk of the Court shall note in the appropriate docket the names of the parties to whom notices of appeal and citations have been mailed, the date of mailing, the names of the papers in which citations have been published, the dates of such publications, and the dates when citations for the record issued and were returned.

(e) Citation for record. -- Upon the filing of the notice of appeal, the Clerk of the Court shall forthwith issue a citation of the Department of Public Safety, which citation shall be served upon the custodian of the records. The citation shall direct such custodian to send to the Court of Common Pleas of the county out of which the citation has issued, together with the citation, within 20 days from service thereof, a certified copy of the record of the proceedings below, including a typewritten copy of the evidence. It shall not be necessary to include a typewritten copy of the evidence as a part of the record if all parties having an interest in the outcome of the appeal shall file with the Department of Public Safety, within 10 days from the filing of said notice of appeal, a written stipulation that the evidence may be omitted as part of the record, in which case the stipulation shall be included as a part of the record; provided that any Judge of the Court of Common Pleas may at any time thereafter order a typewritten copy of the evidence to be filed as a part of the record at any time during the pendency of the appeal.

(f) Bond of nonresident appellant. -- Any appellant who is a nonresident of this State may be required, upon motion in writing of the appellee and proof to the satisfaction of the Court of such nonresidence, by affidavit or otherwise, to give security for costs by a certain day, and in default thereof the appeal of such nonresident appellant may be dismissed.

(g) Procedure for handling appeals. -- Appeals shall be heard and determined by the Court of Common Pleas from the record of proceedings below, except as may be otherwise expressly provided by statute. The Clerk of the Court shall give all parties written notice of the date of the filing of the record of the proceedings below. The appellant's brief shall be served and filed 20 days after the date of said filing of such record as provided in Rule 72.1(e). The appellee's answering brief shall be served and filed 20 days thereafter. The appellant shall serve and file the reply brief, if any, not later than 10 days thereafter. If appropriate, the assigned judge shall schedule the case for argument.

(h) Cross-appeals. -- Any party may cross-appeal from any judgment or order from which an appeal lies to the Court of Common Pleas to be tried or heard on the record made below. A notice of cross-appeal shall be filed within 10 days after the date on which the first notice of appeal was filed. The notice of cross-appeal shall designate the decree, judgment or order, or part thereof, sought to be reviewed. It shall be docketed under the same number as the main appeal, without payment of a filing fee. The caption of a cross-appeal shall be substantially in the following form:

A.B., Plaintiff (or Defendant) below,)
Appellee and Cross-Appellant,)
No.
v.)
)
C.D., Defendant (or Plaintiff) below,)
Appellant and Cross-Appellee.)

(i) Dismissal. -- At any time before filing of the appellee's brief, an appellant may dismiss the appeal voluntarily by serving a notice of dismissal upon the other parties to the appeal, by filing the same with the Clerk of

the Court and paying the costs. Otherwise, a voluntary dismissal may be made only upon stipulation of all parties to the proceeding and with the approval of the Court.

The Court may order an appeal dismissed, sua sponte, or upon a motion to dismiss by any party. Dismissal may be ordered for untimely filing of an appeal, for appealing an unappealable, interlocutory order, for failure of a party diligently to prosecute the appeal, for failure to comply with any rule, statute, or order of the Court or for any other reason deemed by the Court to be appropriate. In the event that the Court shall conclude, sua sponte, that dismissal is appropriate, the Clerk of the Court shall forward to the appellant a notice directing that appellant show cause why the appeal should not be dismissed for the reasons stated in the notice. The notice shall direct the appellant to respond within 10 days after receipt of the notice. After consideration of such response, the Court shall enter an order dismissing the appeal or maintaining jurisdiction of the case. If a response is not filed within the time allowed, the dismissal shall be deemed to be unopposed. If the Court is satisfied that the appeal should be dismissed it shall enter an order of dismissal. Upon entry of any order of dismissal, the Court shall specify the terms thereof including provision for payment of cost.

Rule 72.2. Expedited procedure for appeals on the record.

(a) Application of rule. -- This rule shall apply to appeals to the Court of Common Pleas from the Department of Public Safety from which an appeal may at any time lie to the Court of Common Pleas to be tried or heard on the record below.

(b) Motion to affirm. -- Within 10 days after receipt of appellant's opening brief, appellee may, in lieu of a brief, serve and file a motion to affirm the order, award, determination, or decree or part thereof appealed from. The filing of the motion tolls the time for filing of appellee's brief. The sole ground for such motion shall be that it is manifest on the face of appellant's brief that the appeal is without merit because:

(1) The issue on appeal is clearly controlled by settled Delaware law;

(2) Omitted.

(3) The issue on appeal is factual, and clearly there is substantial evidence to support the findings of fact below; or

(4) The issue on appeal is one of judicial or administrative discretion, and clearly there was no abuse of discretion. The motion to affirm shall state the ground or grounds on which it is based together with citation of authorities and record references to evidence relied upon. It shall not be a brief and shall not contain argument. There shall be no briefing, argument or response to the motion unless requested by the Court. If the motion to affirm shall be granted by the Court, an order or opinion will be entered affirming the order, award, determination, or decree or part thereof appealed from. If the motion shall be denied, the appellee's brief will be due within 20 days after such denial, and the appeal will proceed through briefing, oral argument and disposition as provided in these Rules.

(c) Affirmance sua sponte. -- After filing of the appellant's opening brief, the Court may, sua sponte, enter an order, award, determination, or decree or part thereof appealed from for the reason that it is manifest on the face of the appellant's opening brief that the appeal is without merit because:

(1) The issue on appeal is clearly controlled by settled Delaware law;

(2) Omitted.

(3) The issue on appeal is factual, and clearly there is substantial evidence to support the findings of fact below; or

(4) The issue on appeal is one of judicial or administrative discretion, and clearly there was no abuse of discretion.

(d) Expedited scheduling. -- Upon motion for good cause shown or upon the Court's order sua sponte, the Court may order an expedited schedule of any or all procedures, including a shortened time for the filing of briefs and other papers, in any appeal or other proceeding.

Rule 72.3. Appeals de novo.

(a) Appeals de novo. -- When an appeal de novo is permitted by law, an action is commenced in the Court of Common Pleas by the appellant filing with the Clerk of the Court a notice of appeal within the time prescribed by statute for the filing of an appeal. If no time is prescribed by statute, the notice of appeal shall be filed within 15 days from the entry of the final judgment, order, or disposition from which an appeal is permitted by law. When the appellant is the party having the duty of filing the complaint or other first pleading on appeal, the appellant shall file such pleading with the notice of appeal and a praecipe. When the appellee is the party having the duty of filing the complaint or other first pleading on appeal, the appellee shall serve a copy of such pleading within 20 days after service of the process on appeal, and thereafter the pleading shall proceed as in other actions.

(b) Record; stay. -- The appellant shall file a certified copy of the record of the proceedings below, not including the evidence, within 10 days of the filing of the notice of appeal. Process shall not issue until the appellant has filed the record. There shall be no stay of execution or other proceedings below unless ordered by this court pursuant to Rule 62(c).

(c) Jurisdiction. -- An appeal to this court that fails to join the identical parties and raise the same issues that were before the court below shall result in a dismissal on jurisdictional grounds.1 :nc

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=fn :nd 1. This rule amendment is promulgated pursuant to Fossett & Strock v. DALCO Construction, 2004 Del. Supr. LEXIS 362, C.A. No. 607, 2003 (Decided August 20, 2004)

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Rules 73-76.

Omitted.

X. THE COURT OF COMMON PLEAS: CLERKS.

Rule 77. The Court of Common Pleas: Clerks records and exhibits.

(a) The Court of Common Pleas always open. -- The Court of Common Pleas shall be deemed always open for the purpose of the transaction of business.

(b) Trials and hearings; orders in chambers. -- All trials upon the merits shall be conducted in open Court and so far as convenient in a regular courtroom. All other acts or proceedings may be done or conducted by a judge in chambers, without the attendance of the Clerk or other Court officials within the discretion of the judge.

(c) Omitted.

(d) Notice of orders of judgments. -- Immediately upon the entry of an order of judgment the Clerk of the Court shall serve a notice of the entry by mail in the manner provided for in Rule 5 upon each party who is not in default for failure to appear and shall make a note in the docket of the mailing. Such mailing is sufficient notice for all purposes for which notice of the entry of an order is required by these Rules; but any party may in addition serve a notice of such entry in the manner provided in Rule 5 for the service of papers. Lack of notice of the entry by the Clerk does not affect the time to appeal or relieve a party for failure to appeal within the time allowed.

(e) Duties of Clerk. --

(1) Court attendance. -- The Clerk or a deputy clerk shall attend the Court in person.

(2) Dockets. -- The keeping of properly indexed dockets shall be the responsibility of the Clerk of the Court.

(3) Docketing appeals de novo. -- Where on appeal the action is tried de novo, no appeal shall be entered in the docket until a certified transcript of the record shall be filed with the Clerk of the Court.

(4) Notice of amendment of rules. -- The Clerk of the Court shall give to all members of the Bar of this Court notice of any amendment to these Rules within 10 days from the adoption thereof.

(f) Records and exhibits. --

(1) Custody. -- The Clerk of the Court shall have custody of the records and papers of the Court. The Clerk shall not permit any original record, paper or exhibit to be taken from the courtroom or from the Clerk's office except at the direction of the Court or as provided by statute or by these Rules or by the Rules of the Supreme Court.

(2) Removal of exhibits. -- Exhibits shall not be removed prior to the time provided in these Rules except on motion or stipulation and order of the Court.

(3) Disposition of exhibits. -- After the final determination of a cause by the Court and the expiration of the period for the notice of an appeal and the perfection thereof, if no such appeal has been perfected, all exhibits shall be disposed of in accordance with the direction of the Court.

(4) Stenographic notes. -- The court reporters in all civil matters before the Court shall retain the stenographic notes and audio tapes in a place designated by the Court for a period of 10 years from the date of the notes and/or tapes. After such time, the court reporters are directed to destroy said notes and tapes unless the Court, or any judge thereof, has prescribed a longer period of time in a particular case. Stenographic notes and audio tapes of all civil matter shall be presumed to be destroyed after 10 years.

(g) Opinions to be dated. -- Each written opinion (including letter opinions) shall bear two dates immediately under the caption of the case:

(1) The date of the last oral argument, or brief filed, or other final submission of the case for decision; and

(2) The date of the filing of the opinion or order.

Rule 78. Motion day.

Omitted.

Rule 79. Argument days.

Omitted.

Rule 80. Stenographer; stenographic report or transcript as evidence.

Omitted.

XI. GENERAL PROVISIONS.

Rule 81. Petitions for change of name.

(a) A petition which seeks a change of name for a minor shall be signed by at least one of the minor's parents, if there is a parent living, or if both parents are dead, by the legal guardian of such minor. When the minor is over the age of fourteen, the petition shall also be signed by the minor.

(b) If one or both parents are dead, the petition shall state the date of death of such parent or parents.

(c) If the petition is signed by only one parent, it shall be served, before presentation, upon the parent who did not join in the petition. If personal service cannot be made, substituted service shall be made as the Court directs.

Rule 82. Jurisdiction and venue unaffected.

These Rules shall not be construed to extend or limit the jurisdiction of the Court of Common Pleas or to affect the venue of actions therein.

Rule 83. Rules by district courts.

Omitted.

Rule 84. Forms.

Omitted.

Rule 85. Title.

These Rules may be known and cited as Court of Common Pleas Civil Rules.

Rules 86-89.

Omitted.

Rule 90. Attorneys.

(a) Requirement. -- Except as provided in Rule 90.1 only members of the Bar of the Supreme Court of this State currently entitled to practice in that Court who maintain an office in Delaware for the practice of law shall be entitled to practice as an attorney in this Court.

(b) Withdrawal. -- Except as permitted by order of the Court, no attorney may withdraw and all appearing attorneys are required to continue as such and to perform the duties of counsel imposed by law, by the Delaware Lawyer's Rules of Professional Conduct, and the Rules of this Court. Withdrawal of an attorney ordinarily will not be considered as permissible ground for delay and relief under these Rules.

(c) Agreements between attorneys. -- Agreements between attorneys will not be considered by the Court unless they are in writing and filed with the Clerk or stated on the record in the presence of the Court.

Rule 90.1. Admission pro hac vice.

(a) Attorneys who are not members of the Delaware Bar may be admitted pro hac vice in the discretion of the Court, and such admission shall be made only upon written motion by a member of the Delaware Bar who maintains an office in this State for the practice of law ("Delaware Counsel"). Application for admission pro hac vice must be made separately before each Court in which admission is sought. The admission of an attorney pro hac vice shall not relieve the moving attorney from responsibility to comply with any Rule or order of the Court.

(b) Any attorney seeking admission pro hac vice shall certify the following in a statement attached to the motion:

(i) That the attorney is a member in good standing of the Bar of another state;

(ii) That the attorney shall be bound by the Delaware Lawyers' Rules of Professional Conduct and has reviewed the Statement of Principles of Lawyer Conduct;

(iii) That the attorney and all attorneys of the attorney's firm who directly or indirectly provide services to the party or cause at issue shall be bound by all Rules of the Court;

(iv) That the attorney has consented to the appointment of the Clerk as agent upon whom service of process may be made for all actions, including disciplinary actions, that may arise out of the practice of law under this Rule and any activities related thereto;

(v) The number of actions in any court of record of Delaware in which the attorney has appeared in the preceding 12 months;

(vi) That a payment for the pro hac vice admission assessment in the amount of $300 is attached made payable to the Delaware Supreme Court. If the case in which the pro hac vice admission continues into a subsequent calendar year after the year of admission, such assessment shall be deemed an annual assessment to be renewed and be payable on January 1 of each subsequent year and be deemed delinquent if not paid by February 1 of each subsequent year. There shall be no pro rata apportionment of the pro hac vice admission fee. A notice that a pro hac vice admission may be subject to renewal shall be mailed to Delaware counsel by the Court Administrator of the Delaware Supreme Court. It shall be the duty of Delaware counsel to complete the notice stating whether the case in which the pro hac vice admission was granted

remains open and to supervise the remittance of the renewal assessment if the case in which the pro hac vice admission was granted remains open.

(vii) Whether the applying attorney has been disbarred or suspended or is the subject of pending disciplinary proceedings in any jurisdiction where the applying attorney has been admitted generally, pro hac vice, or in any other way; and

(viii) The identification of all states or other jurisdiction in which the applying attorney has at any time been admitted generally.

(c) The Clerk shall cause the pro hac vice admission assessment to be deposited in the Supreme Court registration fund for distribution as the Supreme Court directs.

(d) Delaware Counsel for any party shall appear in the action in which the motion for admission pro hac vice is filed and shall sign or receive service of all notices, orders, pleadings, or other papers filed in the action, and shall attend all proceedings before the Court, Clerk, or other officers of the Court, unless excused by the Court. Attendance of Delaware Counsel at deposition shall not be required unless ordered by the Court.

(e) Withdrawal of attorneys admitted pro hac vice shall be governed by the provision of Rule 90(b). The Court may revoke a pro hac vice admission sua sponte or upon the motion of a party, if it determines, after a hearing or other meaningful opportunity to respond, the continued admission pro hac vice to be inappropriate or inadvisable.

(f) The motion and certificate described in subsections (a) and (b) of this Rule shall be filed as soon as reasonably possible, and they shall be filed no later than the date of the first appearance of the attorney who seeks admission pro hac vice before the Court or the Clerk in the matter for which admission is sought.

(g) In exercising its discretion in ruling on a motion for admission pro hac vice, the Court shall also consider whether, in light of the nature and extent of the practice in the State of Delaware of the Attorney seeking admission, that attorney is, in effect, practicing as a Delaware Counsel without complying with the Delaware requirements for admission to the Bar. In its consideration of this aspect of the motion, the Court may weigh the number of other admissions to practice sought and/or obtained by this attorney from Delaware courts, the question of whether or not the attorney in fact maintains an office in Delaware although the attorney is not admitted to practice in Delaware courts, and other relevant factors.

(h) The Delaware Counsel filing a motion pro hac vice for the admission of an attorney not a member of the Delaware Bar shall certify that the Delaware attorney finds the applicant to be a reputable and competent attorney and is in a position to recommend the applicant's admission.

(i) A signed copy of the entire pro hac vice motion shall promptly be filed by the secretary of the judge who signed the motion with the Court Administrator of the Delaware Supreme Court for disposition pursuant to Supreme Court Rule 71. The Court Administrator of the Delaware Supreme Court shall provide a copy to Disciplinary Counsel who shall be responsible for contacting Delaware counsel if the information contained in said copy is incomplete.

Rules 91-106.

Omitted.

Rule 107. Briefs.

(a) Number. -- The original of all briefs shall be filed with the Clerk of the Court in the county in which the case is pending. The Clerk of the Court shall deliver each brief to the appropriate Judge. A copy of every letter from counsel to the Court containing argument shall be sent to the Clerk of the Court for filing in the cause.

(b) Time of filing. -- Brief schedules shall be ordered by the Court, and extensions of time for filing briefs will not be authorized, whether or not consent of other parties is obtained, unless the Court enters an order upon a showing of good cause for such enlargement.

(c) Form. -- The title page of all briefs shall contain the following:

(1)a. The name of this Court.

b. The title of the case and its number in this Court.

c. The name(s) of counsel for party submitting the brief with the office address(es) of such counsel.

(2) All typewritten briefs shall be upon paper approximately 8.5 inches by 11 inches in size and shall be bound on the left margin.

(3) Omitted.

(4) Except as provided below, citations will be deemed to be in acceptable form if made in accordance with the "Uniform System of Citation" published and distributed from time to time by the Harvard Law Review Association. The style of citation of all Delaware opinions which are reported in any series of the Atlantic Reporter shall be as set forth in the following examples:

Melson v. Allman, Del. Supr., 244 A.2d 85 (1968)

Prince v. Binsinger, Del. Ch., 244 A.2d 89 (1968)

State v. Pennsylvania Railroad Co., Del. Super., 244 A.2d 80 (1968)

All further references to the previous State Reporter System shall be omitted. The citation of reported opinions of other jurisdictions shall similarly designate the Court, the National Reporter System citation and the date, omitting references to any state reporter system.

(5) The style of citation of all Delaware opinions and orders which are unreported shall be as set forth in the following examples:

Gregory J.M. v. Carolyn A.M., Del. Supr., No. 77,181, Herrmann, C.J. (Mar. 12, 1982)

Ilona H.B. v. Edmund O.B., Del. Supr., No. 22,1981, Herrmann, C.J. (Nov. 12, 1981) (ORDER)

Schreiber v. Carney, Del. Ch., C.A. No. 6202, Harnett, V.C. (Dec. 3, 1982)

Hashorva Twer v. Hashorva, Del. Super., C.A. No. 78A-OC-6, Bifferato, J. (Oct. 21, 1980)

G. v. G., Del. Fam., File No. C-589, Poppiti, J. (May 27, 1980)

Williams v. Abbate, Del. CCP, C.A. No. 1992-06-001, DiSabatino, J. (Jan. 13, 1993)

(d) Contents. -- All briefs shall contain the following matter arranged in the following order:

(1) A table of contents or index.

(2) A table of citations arranged alphabetically and indicating the pages of the brief on which each cited authority appears.

(3) In the first brief of each party, a statement of the case, including a statement of the nature of the proceedings and a concise chronological statement, in narrative form, of all relevant facts with page references to the transcript of testimony, if any, and to any pleadings and exhibits.

(4) A statement of the questions involved.

(5) Argument, divided into sections under appropriate headings, one section to be devoted to each of the questions involved.

(e) Failure or neglect to file briefs or discovery material. -- If any brief, memorandum, deposition, affidavit or any other paper which is or should be a part of a case pending in this Court, is not served and filed within the time and in the manner required by these Rules or in accordance with any order of the Court or stipulation of counsel, the Court may, in its discretion, dismiss the proceeding if the plaintiff is in default, consider

the motion as abandoned, or summarily deny or grant the motion, such as the situation may present itself, or take such other action as it deems necessary to expedite the disposition of the case. Upon the showing of good cause in writing, the Court may permit late filing of any of the aforesaid papers and pursuant to a written rule or order. This Rule shall not be deemed to affect any other Rule or Rules of the Court specifically providing for the time in which to file motions to which there may be attached briefs, affidavits and/or memoranda. If a motion to compel compliance with existing orders or stipulations is granted after an opportunity for hearing, the Court shall require the party, person or attorney advising the same whose conduct necessitated the motion, to pay to the other party the reasonable expenses in obtaining and/or attending the motion to compel including attorney's fees, unless the Court finds the delay was justified or other circumstance make the award of expenses unjust.

(f) If an unreported or memorandum opinion is cited, a copy thereof shall be attached to the brief, and the case number in which it was filed shall be stated. If the opinion does not contain a sufficient statement of the facts to demonstrate its pertinency to the pending argument, a statement of the facts shall also be attached to the brief. If the citation is first made in a reply brief, the opposing party may discuss the opinion at oral argument or, upon application made at oral argument, may be given the opportunity to do so in writing.

(g) Lengths of briefs. -- Without leave of Court, an opening or answering brief shall not exceed a total of 35 pages and a reply brief shall not exceed 20 pages, exclusive of appendix. In the calculation of pages, the material required by paragraphs (d)(1) and (2) of this Rule is excluded and the material required by paragraphs (d)(3) through (5) of this Rule is included.

(h) Letter memoranda. -- Every letter memorandum shall be governed in form as the Court may direct.

Rule 108. Sureties.

(a) Surety companies. -- Each surety company shall, in the month of January in each year, file with the Clerk of the Court of the Court of Common Pleas, in each county in which such surety company is engaged in business, a power of attorney authorizing the execution of bonds by the attorney in fact designated in said power of attorney, before the Courts shall accept or approve such company as surety. Nothing herein contained shall prohibit the execution by a surety company of any bond within this State by its proper officers as required by law.

(b) Attorneys and other officers. -- No attorney, or other officer of this Court, shall be taken, directly or indirectly, as special bail or surety in any case pending in, or appealed to, this Court. This prohibition shall also apply to any agent, employee, member of the immediate family of any such attorney or court officer, or any corporation in which such attorney or court officer owns a controlling interest. This prohibition shall not apply to any bond in which the attorney, court officer, agent, employee or family member, as above defined, may be the principal. The phrase "member of the immediate family" shall include the spouse, father, mother, father-in-law, mother-in-law, son, daughter, brother, sister, brother-in-law, or sister-in-law or any such attorney or Court officer.

Rule 109. Fees and costs.

A. All filing fees shall be non-refundable and shall cover all costs, except sheriff's service, which shall be paid separately by the moving party to the sheriff.

B. The fees of the Court of Common Pleas for the services specified shall be as follows:

(1) Civil complaint -- $75.00

(2) For appeals from Justice of Peace Courts and Department of Public Safety, and Dog Control Panel -- $125.00

(3) Petition for change of name -- $50.00

(4) Suspension of license -- $10.00

(5) Subpoena for Sheriff -- $10.00

(6) Prepare file for Appeal to Superior Court -- $25.00

(7) Wage Attachement, writs of levy Upon goods and chattels and writs of sale of levied assets, writ of replevin -- $20.00

NON-FEE CHARGES

Copy charge (maximum per page) -- $5.00

Certified copy of any document -- $10.00

Closed file retrieval -- $10.00

Closed file retrieval (expedited) -- $25.00

Rule 110. Proceedings in forma pauperis.

Upon application of a party claiming to be indigent, the Court may authorize the commencement, prosecution or defense of any civil action or civil appeal without prepayment of fees and costs or security therefor, by a person who makes affidavit that the person is unable to pay such costs or give security therefor. Such affidavit shall state the nature of the action or defense and affiant's belief that the affiant is entitled to redress and shall state sufficient facts from which the Court can make an objective determination of the petitioner's alleged indigency. The Court may in its discretion conduct a hearing on the question of indigency. In any action in which a claim for damages is asserted by a party seeking the benefit of this rule, the Clerk shall, before entering a dismissal of the claim or satisfaction of any judgment entered therein, require payment of accrued court costs from any party for whose benefit this rule has been applied, if said party has recovered a judgment in said proceedings or received any funds in settlement thereof. A party and the party's attorney of record shall file appropriate affidavits in the event a claim is sought to be dismissed without settlement or recovery.

Rule 111

Omitted.

Rule 112. Commissioners.

(A) Each Commissioner shall have all powers and duties conferred or imposed upon Commissioners by law, by the Rules of Civil Procedure for the Court of Common Pleas and by Administrative Directive of the Chief Judge, including, but not limited to:

(1) the power to administer oaths and affirmations, and to take acknowledgments, affidavits, and depositions;

(2) the power to serve as a special master or master pro hac vice;

(3) Non case-dispositive matters. -- The power to conduct non case-dispositive hearings, including evidentiary hearings, and the power to hear and determine any pretrial or other non case-dispositive matter pending before the Court.

(i) The Commissioner shall file an order under subparagraph (3) with the Clerk's office and shall mail copies forthwith to all parties. It shall not be necessary for the Commissioner to include proposed findings of fact and recommendations in any order under this subparagraph.

(ii) Within 10 days after filing of a copy of a Commissioner's order under subparagraph (3), any party may serve and file written objections to the Commissioner's order which set forth with particularity the basis for the objections. The written objections shall be entitled "Motion for Reconsideration of Commissioner's Order." A copy of the written objections shall be served on the other party, or the other party's attorney, if the other party is represented. The other party shall then have 10 days to file and serve a written response to the written objections.

(iii) The party filing written objections to a Commissioner's order shall cause a transcript of the proceedings before the Commissioner to be prepared, served, and filed unless, subject to the approval of a Judge, all parties agree to a statement of facts.

(iv) A judge may reconsider any hearing or pretrial matter under subparagraph (3) where it has been shown that the Commissioner's order is based upon findings of fact that are clearly erroneous, or is contrary to law, or is an abuse of discretion.

(v) Orders entered under this subparagraph shall be effective immediately, and no motion for reconsideration of a Commissioner's order shall stay execution of the order unless such stay shall be specifically ordered by a judge.

(4) Case-dispositive matters. -- The power to conduct case-dispositive hearings, including case-dispositive evidentiary hearings, a motion for judgment on the pleadings, for summary judgment, to dismiss for failure to state a claim upon which relief can be granted, and involuntarily to dismiss an action, and to submit to a judge of the Court proposed findings of fact and recommendations for the disposition, by a judge, of any such case-dispositive matter.

(i) The Commissioner shall file proposed findings of fact and recommendations under subparagraph (4) with the Clerk's office and shall mail copies forthwith to all parties, or to a party's attorney if the party is represented.

(ii) Within 10 days after filing of a copy of a Commissioner's proposed findings and recommendations under subparagraph (4), any party may serve and file written objections to the Commissioner's order which set forth with particularity the basis for the objections. The written objections shall be entitled "Appeal from Commissioner's Findings of Fact and Recommendations." A copy of the written objections shall be served on the other party, or the other party's attorney, if the other party is represented. The other party shall then have 10 days from service upon that party of written objections to file and serve a written response to the written objections.

(iii) The party filing written objections to a Commissioner's order shall cause a transcript of the proceedings before the Commissioner to be prepared, served, and filed unless, subject to the approval of a Judge, all parties agree to a statement of facts.

(iv) A judge of the Court shall make a de novo determination of those portions of the report or specified proposed findings of fact or recommendations to which an objection is made. A judge may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Commissioner. A judge may also receive further evidence or recommit the matter to the Commissioner with instructions.

(B) A party seeking reconsideration of an order of a Commissioner under subparagraph (3) or appealing the findings of fact and recommendations of a Commissioner under subparagraph (4) who fails to comply with the provisions of this Rule may be subject to dismissal of said motion for reconsideration or appeal.

(C) The time periods specified in this Rule may be shortened or enlarged, for good cause, by a Judge.

(D) A Commissioner may be assigned such additional duties and powers by the Chief Judge, or the Chief Judge's designee, as are not inconsistent with the Constitution and laws of the State of Delaware with the Civil Rules of the Court of Common Pleas or an Administrative Directive of the Chief Judge.

Rule 113. Masters.

The Court shall have authority in any case pending in the Court of Common Pleas to appoint a Master pro hac vice in such case. The procedure governing

cases assigned to Masters will follow the civil rules of procedure of the Superior Court applicable to Masters unless modified by this Court.